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THIRD UNITED NATIONS CONFERENCE TO REVIEW ALL
ASPECTS OF THE SET OF MULTILATERALLY AGREED
EQUITABLE PRINCIPLES AND RULES FOR THE
CONTROL OF RESTRICTIVE BUSINESS PRACTICES
Geneva, 13 November 1995
Item 8 of the provisional agenda

REVIEW OF ALL ASPECTS OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES

(a) Review of 15 years of application and implementation of the Set

(b) Consideration of proposals for the improvement and further development of the Set, including international cooperation in the field of control of restrictive business practices

PREPARATIONS FOR A HANDBOOK ON RESTRICTIVE BUSINESS PRACTICES LEGISLATION

Handbook on Restrictive Business Practices Legislation

Note by the UNCTAD secretariat

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INTRODUCTION

1. The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, in Section F.6 (c), provides for the compilation of a Handbook on Restrictive Business Practices Legislation.

2. Further, the Intergovernmental Group of Experts on Restrictive Business Practices, at its twelfth session, requested the UNCTAD secretariat to continue the compilation and updating of the Handbook on Restrictive Business Practices Legislation and those member States that have not done so to date, or which have adopted new or amending legislation, are invited to submit the text of their competition laws to the secretariat in one (or more) official languages of UNCTAD, as well as appropriate commentary to such legislations, according to the format contained in the introduction to TD/B/RBP/94 (see agreed conclusions, Annex I, in TD/B/40(2)/2-TD/B/RBP/98).

3. Accordingly, the secretariat prepared this note which contains commentaries on and texts of restrictive business practices legislation of Lithuania, Mexico, Slovak Republic and Zambia.*

4. Thus, to date the UNCTAD secretariat has issued notes containing commentaries and texts of restrictive business practices legislation of 26 countries: Belgium, Brazil, Canada, Chile, Denmark, Finland, France, Germany, Italy, Jamaica, Kenya, Lithuania, Mexico, Norway, Pakistan, Poland, Portugal, Republic of Korea, Slovak Republic, Spain, Sri Lanka, Sweden, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela and Zambia.

5. The officer-in-charge of UNCTAD, in his note of 2 May 1994, requested States which so far had not done so, or which had introduced new or amending RBP legislation since their last communication to the UNCTAD secretariat, to provide the UNCTAD secretariat with their relevant legislation, court decisions and comments, on the basis of the format supplied (see below). (However, in the case of States adopting RBP legislation for the first time, the commentary may not necessarily conform to the format.) In order to facilitate the reproduction of texts of legislation in more than one official language of the United Nations, States were invited, as called for by the Intergovernmental Group, to submit, if possible, the text of their legislation in one or more other languages of the United Nations.

6. The UNCTAD secretariat is grateful to States which have contributed the material requested for the compilation of the Handbook, and once again requests States which have not yet done so to meet the request of the officer-in-charge of UNCTAD mentioned above.

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* The contributions are reproduced in the language and form in which they were submitted to the secretariat.

Format for contributions to the Handbook

A. Description of the reasons for the introduction of the legislation.

B. Description of the objectives of the legislation and the extent to which they have evolved since the introduction of the original legislation.

C. Description of the practices, acts or behaviour subject to control, indicating for each:

(a) The type of control, for example: outright prohibition, prohibition in principle, or examination on a case-by-case basis;

(b) The extent to which the practices, acts or behaviour in Section D, paragraphs 3 and 4, of the Set of Principles and Rules are covered by this control, as well as any additional practices, acts or behaviour that may be covered, including those covered by controls relating specifically to consumer protection, for example, controls concerning misleading advertising.

D. Description of the scope of application of the legislation, indicating:

(a) Whether it is applicable to all transactions in goods and services and, if not, which transactions are excluded;

(b) Whether it applies to all practices, acts or behaviour having effects on that country, irrespective of where they are committed;

(c) Whether it is dependent upon the existence of an agreement, or of that agreement being put into effect.

E. Description of the enforcement machinery (administrative and/or judicial), indicating any notification and registration agreements, and principal powers of body(ies).

F. Description of any parallel or supplementary legislation, including treaties or understandings with other countries, involving cooperation or procedures for resolving disputes in the area of restrictive business practices.

G. Description of the major decisions taken by administrative and/or judicial bodies, and the specific issues covered.

H. Short bibliography citing sources of legislation and principal decisions, as well as explanatory publications by Governments, or legislation, or particular parts thereof.

COMMENTARIES ON RESTRICTIVE BUSINESS PRACTICES LEGISLATION

I. Commentary by the Government of Lithuania on Decree No. 785: The Law on Competition

The Law on Competition of the Republic of Lithuania has entered into force on 1 November 1992. The Price and Competition Office (PCO) under the Ministry of Economics was established, staffed and started its practical activities since 10 February 1993 in order to ensure the oversight of the observance of the law.

A. Description of the reasons for the necessity of adopting this law

The complex economic reform is being carried out in the Lithuanian Republic with an objective to reorganize centrally planned economy to the market economy. In the process of implementation of reforms the wide price liberalization was carried out which enabled to ensure both the freedom of economic entities in their economic decisions and the possibilities of consumers to make their choice. The privatization process of the State economic sector was going on in parallel and it is taking place up to now. The above-mentioned reforms were being implemented under the situation of inherited economic structure highly concentrated and highly monopolistic.

Really problems related to the large market power and abuse of dominant position of large economic entities appeared during the process of price liberalization. One could observe also the agreements of the economic entities and their concerted practices on price fixing and sharing market. Thus, the aim of the further development of reforms and economic progress caused the necessity of both the adoption of the Law on Competition and implementation of oversight of its observance in order to prevent actions that might restrict competition. General experience of industrial countries in development of market economies played a role of great importance in creating the basis of the competition law. No less important were the references of international organizations, such as EFTA and World Bank and the examples of the countries members of EEC, in particular taking into account the task of integration of Lithuania into the worldwide and regional economic systems.

The harmonious coordination of the Competition Law and practice with the existing worldwide and regional practice is an essential factor in pursuing the integration aims.

B. The description of appropriate objectives and complementary legitimate acts of the Law

The main objective of the Law on Competition is prevention of the business restraining practice (anti-competitive behaviour) in order to create conditions for effective competition in commodity markets. Consequently, it creates the basis for economic effectiveness and consumer welfare.

Nothing has been changed in the Law on Competition since the time it had entered into force, since 1 November 1992.

C. The description of appropriate controllable practices

The Law on Competition of the Lithuanian Republic contains a prohibition to economic entities that occupy the dominant position in the market to act in a manner which already restrict, or may restrict competition and thus may violate the economic interests.

Moreover, the Law on Competition of the Lithuanian Republic provides the following prohibitions:

- the agreements (concerted actions) among economic entities that restrict or hinder the competition;
- restriction of the competition by bodies of the State authority and Government (are also prohibited by the Law); unfair competition;
- the concentration of market structures is controlled and prohibited if after the concentration the dominant market position may be noticed and competition is restricted or may be restricted in the future.

Prohibition of abuse of dominant market position

The Law provides that the economic entity cannot be considered a dominant one if its market share of certain goods is no more than 40 per cent. A sample list of the prohibited actions of economic entity is described in the Law on Competition. This list contains:

(1) operation related to putting obstacles to competing economic entities in their attempts to enter the market;

(2) pushing competitors out to competing economic entities of the market;

(3) discrimination of the partners and price fixing for the third persons.

To summarize: these are both vertical and horizontal actions that restrict competition and are prohibited by the Law.

Article 5 of the Law on Competition "Exceptions to prohibited activities" provides at the same time, that the activities of dominant economic entities that are prohibited by the Law on Competition by the formal characteristics may be considered to be in agreement with the Law if it is proved that they resulted in:

- constant reduction of prices for consumers;
- improvement in the quality of goods.

It means, as a matter of fact, that each concrete case of abuse of dominant position is to be investigated and evaluated separately.

In 1993 the resolution was carried by the Competition Council which provided in addition the criteria of dominant market position.

Moreover, we have a prevision to pass the legitimate act which would regulate the cases of abuse of market dominance.

Prohibition of Agreements (concerted actions) between economic entities which restrict or hinder competition.

A sample list of prohibited agreements and concerted actions is presented in the Law on Competition if they restrict or hinder competition. These are agreements on fixed prices, volume of production, sharing market according to territorial principle as well as principles of volume of sales and purchase of goods, types of goods, groups of purchasers or sellers. Moreover, both ousting competitors from the markets and making obstacles in their way of entering into the market (and doing this through the agreement) as well as refusal of concluding contracts with certain sellers or purchasers are also considered as violation of the Law and are prohibited by the latter.

An exception rule is also provided by article 5 of the Law on Competition to prohibited agreements (coordinated actions) that restrict or hinder competition. It means, that every concrete case of agreement (concerted actions) should be considered (investigated) and legally evaluated separately.

Prohibition of bodies of State authority and Government from restricting competition

Authorities are prohibited from making decisions which:

(1) restrict the independence of economic entities or the conclusion of economic contracts;

(2) hinder setting and reorganization or restructuring of existing economic entities;

(3) put in advantage or disadvantage individual economic entities or otherwise restrict competition.

This prohibition reflects the specific situation in the transition to market economy and is valid as much as it is in agreement with authority of State bodies provided by the other laws.

Prohibition of activities of unfair competition

There is a prohibition to economic entities from dissemination of misleading, improper and distorted data (including advertising too) that may cause losses of another economic entity or may harm its reputation.

It is also prohibited to mislead consumers through false information regarding the quality of goods, characteristics of utilization, location and a way of manufacture, amount and price of sale. The wilful use of the name, trade-name or marking, form of product packaging or exterior of other economic entities is also attributable to the practices of prohibited unfair competition. Moreover, economic entities are prohibited from the actions, related to industrial espionage.

No exceptions apply to the prohibited unfair competition. In 1993 the Competition Council has ratified "Executing Order of the Supervision of Unfair Competition Actions", which regulates in detail actions of unfair competition, makes their legal evaluation and provides economic sanctions.

Control of the concentration of market structures

The Law contains the provision that economic entities must inform the PCO about the expected concentration of structures before undertaking any steps of market concentration if total sum parameters which reflect economic actions of the economic entities that are potential going to be concentrated exceed certain limits determined by the Law. Concentration shall be prevented by the PCO, if the latter would result in new highly concentrated economic entity which would be able to dominate in the market, i.e. would own no less than 40 per cent of market share.

The Law provides the exception in that the concentration of market structures which has not been approved by the PCO may be allowed in exceptional order through the written permission given by the Government of the Lithuanian Republic.

In 1993 the legitimate act "On the control of the concentration of market structures" is expected to be approved which should determine the rules of the control of concentration in detail.

D. Characterization of the application sphere of the Law

The Law applies to the regulation of the relations which arise from both the actions restricting competition and unfair competition throughout the territory of the Republic of Lithuania.

The Law on Competition which regulates functioning and economic relations of different economic areas provides that it is valid as much as it is not in contradiction with the other laws of the Lithuanian Republic. It means that the Law on Competition regulates all types of economic - commercial activity with the appropriate exceptions provided by the other laws and international treaties.

E. Mechanism of application of the Law and the basic rights of bodies

The supervision of the observance of the Law on Competition is carried out within the Republic of Lithuania by the PCO, the director of which is appointed by the Government. The special Competition Council consisting of seven members appointed for a term of three years makes decisions on the issues related to the competition and regulated by this Law. Four members are appointed by the Government of the Lithuanian Republic on the basis of recommendations of consumers, as well as scientific, business and industrial organizations.

The PCO makes investigations of the actions, which restrict competition (unfair competition) and reports conclusions to the Competition Council which makes decisions whether violations of the Law on Competition by the above-mentioned actions were taking place or not.

If the presumption proved correct, the Competition Council has a right to decide to apply economic sanctions to the economic entities. The volume of sanctions may be established up to 10 per cent of the total annual gross income of economic entities. Fines amounting up to 3 per cent of the total annual gross income may be imposed on economic entities for submission of misleading information. Moreover, the Competition Council has a right to impose fines equalling up to three months average earnings on officials of both the State government bodies and economic entities for disregard of obligations made by the Competition Council or belated fulfilment of the latter, as well as for submission of misleading information. Fines imposed by the Competition Council shall be transferred to the State budget.

Sanctions for the violation of the Law on Competition applied to the economic entities are regulated by the standard acts in detail.

Decisions of the Competition Council may be appealed to the Court.

Losses incurred by the economic entities or consumers due to the violation of this Law and made by other economic entities must be recovered by the latter through the procedure established by the Law.

F. Description of the legitimate acts and agreements with the other countries

The order of application of the Law on Competition is provided by the Competition Council which possesses this right under the decision of the Parliament of the Lithuanian Republic, up to June 1993 the Statutes of both the PCO and the Competition Council were approved by the Government of the Lithuanian Republic. The Competition Council has approved the Resolution "On supervision of the practices of unfair competition".

We have a prevision to establish the rules of competition and collaboration order in the Treaties on free trade concluded with individual countries, as well as countries, members of EFTA.

In the meanwhile, the competition rules and terms of collaboration have not entered into force in even one of the mentioned treaties.

G. Characterization of the general decisions and above-discussed specific problems

Since the PCO carries out its functions for four months only the annual report of its activities is not prepared yet. During this period the activities of the PCO has been carried out in the supervision of the Law on Competition and Price Law and the promotion of competition.

The main concern assigned was to prepare the legitimate acts of the Law on Competition and the methodical materials, also to supervise the provisions of the Law on Competition. Analysis of markets in the main areas of the economy and investigations of complaints of the economic entities were the directions of this supervision. After finishing these investigations the prepared materials were presented for the Competition Council who took the respective decisions.

Since 11 February 1993 some amendments of the various laws of the Lithuanian Republic were proposed by the PCO. The PCO has obliged some economic entities to provide the financial and price reports to the Office. Most violations of the Law on Competition were made by economic entities in dominant position. The sanctions and financial fines were assigned for some of them according to the Law on Competition.

Analysis of the markets in the main areas of economy is being carried out constantly.

The activities of the PCO will be turned to solving the competition issues also in the future.

H. Short bibliography describing the sources and essential decisions of the Laws

For your information, we offer the Law on Competition of the Republic of Lithuania translated into English, as well as the statutes of both the PCO and the Competition Council approved by the Government of the Lithuanian Republic translated into English non-officially. We regret our lack of the official translations of the commentaries of both the legitimate acts.

Technical cooperation in the sphere of the Competition Policy

The main objective of the technical collaboration in the sphere of the Competition Policy is appropriation of experience of the competition institutions in the industrial countries of market economy as well as training the staff of the PCO of the Lithuanian Republic.

This objective was basically carried out through the entering into relations with the international organizations and appropriate competition institutions of the other countries.

Since November 1992 the relations were maintained with such international organizations as the Economic Commission of EEC, PHARE Foundation and OECD. We have also signed the agreement on Cooperation with Denmark in the sphere of Competition.

However, the most developed form of collaboration was the organizing of the workshops and training courses. Especial benefits were gained by the employees of the PCO of the Lithuanian Republic through the two-week workshops that took place in Vilnius and were conducted by the specialists of the Antitrust Division of the United States Department of Justice and United States Federal Trade Commission. These workshops were attended not only by the employees of the PCO but also by the representatives of other ministries and departments.

Moreover, during the reporting period several employees of the PCO were given a possibility to extend their knowledge in the sphere of competition policy at the workshops organized in Vien (they included the programmes on the Market Definition, Abuse of Dominant Position, Horizontal Agreements).

The effect of these workshops and training courses was that the employees of the PCO were given everything necessary for the meeting problems of competition in foreign countries and sharing experience in solving specific cases.

It is essential to note a fact that such a cooperation was almost entirely provided with the funding from the sources of support.

The Adviser of the Competition Institution of Denmark who fulfils a long-term mission in Lithuania was giving assistance to the employees of the PCO in solving current issues.

Moreover, the PCO of the Republic of Lithuania started to cooperate with the Antitrust Institution of the Republic of Poland. Recently, the project of the agreements is prepared in cooperation with these countries in the sphere of Competition and Antitrust Policies. They are expected to be signed at the nearest time.

However, it must be noted that the cooperation with foreign countries in the sphere of Competition Policy was not sufficiently developed during the past period. There was a lack of practice abroad and the closer cooperation with the Competition institutions of the other countries.

II. Commentary by the Government of Mexico on "Ley Federal de Competencia Económica", 24 December 1992

INTRODUCTION

In December 1992 the Mexican Congress approved the proposal of the Federal Executive to adopt a new "Federal Law concerning Economic Competition" (Ley Federal de Competencia Económica) and to abrogate the 1934 Basic Law to Regulate the Implementation of Article 28 of the Constitution Concerning Monopolies, the 1950 Act Concerning the Powers of the Federal Executive in Economic Matters, the 1941 Processing Industries Act and the 1937 Act Concerning Associations of Producers for Purposes of Distribution and Sale of their Products.

The new Federal Law concerning Economic Competition was published in the 24 December 1992 issue of the Official Gazette of the Federation and came into force on 22 June 1993. It established an autonomous agency - the Federal Competition Commission - with responsibility for the implementation of the Law. The adoption of the new law and the setting-up of the Commission mark a turning-point in competition policy in Mexico.

The purpose of this note is to provide information on the principal features of the new law; it also provides a brief explanation of the process of evaluation of monopolistic practices and concentrations as conducted by the Commission. The examples quoted are given solely for purposes of illustration and must therefore be considered as hypothetical and as having no legal implications regarding the present or future conduct of any individual, enterprise or group of enterprises. It also contains some guidelines for the submission of complaints and of prior notification of planned concentrations and a directory of the Commission.

The information contained in this note does not constitute an administrative interpretation of the new Federal Act Concerning Economic Competition. Its sole aim is to assist all concerned to understand the new rules promoting market competition.

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III. Evaluation of relative monopolistic practices
IV. Concentrations
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I. THE NEW POLICY ON COMPETITION

What are the aims of the Federal Law Concerning Economic Competition?

The aim of the Law is to promote economic efficiency and to protect freedom of competition and the competitive process. To achieve that aim the Law relates to the conduct of economic agents and to that end establishes a basically preventive policy with regard to concentrations and, where appropriate, lays down penalties for monopolistic practices.

Why the opposition to monopolistic practices?

In a monopoly market the quantity of a good or service supplied will be less than that available in a market governed by freedom of competition and the competitive process, and the price charged may be higher than in a competitive market, or same but for products of inferior quality. In addition, since the level of production is lower than that observed where competition prevails, adverse effects on the level of employment ensue. From this standpoint monopolies are inefficient and detract from social well-being.

Is the Law consistent with economic policy?

Yes. The Law falls within the framework of the measures taken to modernize the national economy and to set it on the path of healthy and sustained growth. It supports the policies of opening up to international trade, deregulation and privatization and establishes the legal framework which will help to ensure the proper functioning of markets inasmuch as it prohibits and punishes commercial practices unduly restricting access to markets or eliminating competitors, procuring benefits for only a few individuals or leading to cartelization. The Law minimizes the use of instruments for the exercise of direct control over enterprises and enables markets to function; on the other hand, while rejecting the premise that market forces always lead to ideal situations, it recognizes that the problem of monopolization is a recurrent one requiring continual vigilance.

To whom does the Law apply?

The Law applies to all physical or moral persons, whether of Mexican or foreign nationality, and irrespective of the nature of the economic activity they are pursuing within the country. It also covers agencies of public administration at the federal, State and municipal levels and associations of professionals. The only exceptions are those specified in the Constitution - the functions exercised exclusively by the State in the key areas specified in article 28 of the Constitution; associations of workers established in accordance with the relevant legislation to protect their own interests; the privileges granted for fixed periods to authors and artists in the production of their works and those granted to inventors for the exclusive use of their inventions; and associations or cooperative societies selling their products directly in foreign markets provided that they meet with the requirements laid down.

Does the Law apply only to sellers' monopolies?

No. The Law applies both to practices by a supplier which are prejudicial to his distributors or customers and to practices by any agent which are prejudicial to his suppliers.

What is the authority for competition matters?

The law has established the Federal Competition Commission. This is a decentralized administrative agency of the SECOFI with technical and operational autonomy; its task is the prevention, investigation and combating of monopolies, monopolistic practices and concentrations.

II. MONOPOLISTIC PRACTICES

What are the types of monopolistic practices?

There are two types: absolute and relative. The law distinguishes between the two. The former are deemed to be unequivocally and unconditionally anti-competitive. The net effect of the latter on competition and the competitive process is not always clear, and consequently they must be evaluated if they are to be deemed harmful.

What are absolute monopolistic practices?

Absolute monopolistic practices are agreements between competitors to fix prices, engage in collusion at public auctions or to share out production or for the distribution of merchandise. Agreements of this type do not entail any integration of productive processes; consequently they do not give rise to any gain in efficiency and their purpose is clear, namely to monopolize the market. Consequently practices of this kind are invariably prohibited and will be punished with the utmost severity. In addition, the agreements concluded will be devoid of legal effect; this means that they are unenforceable. Practices of this kind are generally referred to as "horizontal practices" since they are developed between competing enterprises; they are the ones most harmful to the competitive process.

Article 9 of the Law defines as absolute monopolistic practices all contracts, agreements, arrangements or associations concluded between economic agents competing with one another where their objective or effect is any of the following:

I. *To fix, increase, agree on or manipulate the selling or purchase prices of goods or services for which supply or demand exists in the markets, or to exchange information with that end in view;*

II. *To establish an obligation to refrain from producing, processing, distributing or marketing goods save in restricted or limited quantities or to provide services restricted or limited in number, volume or frequency;*

III. *To divide, distribute, assign or impose portions or segments of an existing or potential market for goods and services as regards clientele, suppliers and specified or specifiable periods of time or geographical areas; or*

IV. *To fix, agree on or coordinate positions (or abstention) regarding bids, competition tenders, auctions or public offerings.*

In all these cases, and regardless of the size of the market or of the enterprises engaging in monopolistic acts, a breach of the law will have been committed and will give rise to administrative sanctions in addition to any criminal liability which may have been incurred.

What are relative monopolistic practices?

The practices defined by the Law as "relative monopolistic practices" are those which generally have both positive and negative effects, according to the manner in which they are applied; it would thus be wrong to introduce a general prohibition of such practices. They may be designed to promote the integration or coordination of production or distribution with a view to improving the competitiveness of the enterprises concerned and thus reduce prices charged to the final consumer. However, in certain circumstances such practices may be harmful to competition - more specifically, where the negative effects of those practices exceed the positive effects to which they may give rise. Consequently the Law lays down evaluation criteria and conditions which must be met for a relative practice to be deemed monopolistic and consequently in breach of the Law.

Which are relative monopoly practices?

Article 10 of the Law specifies the practices which will be deemed to be relative monopolistic practices if the legal criteria are met. An explanation of the various relative monopolistic practices, referred to under the names by which they are generally designated, follows; the legal text describing the practice in question is given at the head of each subsection. It must be stressed that these practices will be considered as breaches of the Law only when the evaluation criteria described later have been examined. These practices are also referred to as "vertical", since they are engaged in by enterprises or agents involved in vertical relationships such as that between a producer and a distributor.

Vertical segmentation of markets

I. *Between economic agents not competing with one another, the fixing, imposition or introduction of exclusive distribution of goods and services on a basis of items or geographical location or for specified periods of time, including the division, distribution or allocation of customers or suppliers; and also the imposition of an obligation not to manufacture or distribute goods or to provide services for a specified or specifiable period of time.*

By definition the "vertical" segmentation of markets implies a restriction on the number of competitors in a given situation. It may be based on considerations of time or geography or of the characteristics of the goods or persons concerned. This type of segmentation differs from "horizontal" segmentation of markets inasmuch as it does not derive from an agreement or arrangement concluded among competitors; it is generally agreed on between a wholesale supplier and his retailers or between one large retailer and a number of suppliers.

An example of geographical segmentation of markets is the case of a supplier of a particular good who allocates to each of his distributors a particular region for their sales operations. This frequently happens quite legitimately in sectors such as those of franchising and the distribution of durable goods. The case of a distributor who purchases products from different suppliers according to the season of the year may also fall within the definition of segmentation of markets based on specified periods of time. Another case of market segmentation might be that of a supplier who divides his distributors into two types - wholesalers and retailers; cases of this kind would not constitute punishable practices either. However, a cartel agreement might be disguised as a vertical segmentation of markets; alternatively, a monopolist wholesaler might divide up the market to restrict competition among his retail distributors; such an arrangement might be considered as monopolistic. Thus each case will require separate study.

Restrictions on the sale or resale price of the end-product

II. The imposition of a price, or of other conditions, with which a distributor or supplier must comply when selling or distributing goods or providing services.

Suppliers frequently impose conditions relating to the retail prices of their products, the construction or decoration of selling points and the services their distributors should provide to the final consumer. These practices are generally based on legitimate considerations and designed to promote efficiency; this might be the case with restrictions relating to marketing techniques, including practices designed to inform or to guarantee a particular image, quality standard or level of service.

However, a supplier with monopolistic power may impose a minimum resale price to eliminate competition between suppliers and discriminate between market segments or to prevent competition among the distributors of goods and services. This is wrongful, since the distributor should be in a position to compete on price except where goods on consignment are involved. In addition, an agreement between competitors to fix prices - which the law deems to be an absolute monopolistic practice - might be disguised as a minimum resale price agreement to evade or circumvent the danger of a complaint in respect of recourse to an absolute monopolistic practice. In view of these considerations the Law proposes evaluation not only of the form of agreements but also of their substance. In most cases the fixing of prices and other conditions of resale make for greater efficiency; but they may also constitute a disguised method of imposing a monopolistic agreement and even offer a means of evading the law.

Sales with strings attached

> *III. Sales or transactions made subject to the condition of purchasing, acquiring, selling or supplying an additional good or service which is normally distinct or distinguishable as such, or on a basis of reciprocity.*

The sales of a wide range of goods frequently include other goods which, although forming parts of the "package", are separate and distinct and can be acquired separately. In the majority of cases this practice is not monopolistic, since consumers have the option of acquiring the goods separately, if it suits their interests, at a higher or lower price than the package. However, when a consumer purchases a good or service A which is only sold together with a separate good or service B, and, as a result of the substantial power of the supplier in that market, there are no alternatives available, action of this kind might be deemed to be a relative monopolistic practice.

Exclusive contracts

> *IV. Sales or transactions made subject to the condition of refraining from using, acquiring, selling or supplying the goods or services produced, processed, distributed or marketed by a third party.*

Contracts providing for exclusive dealing with a particular supplier or distributor are widespread in commerce and industry. They are generally based on efficiency criteria, and their purpose is to standardize or ensure a measure of stability in the sale, purchase, quality or prices of goods or services. This same practice may be deemed to be monopolistic if an enterprise with substantial power, on the base of an exclusive contract, debars in practice other competitors from access to distribution or production channels or eliminates those which already enjoy such access.

Refusal to treat

> *V. Unilateral action consisting of a refusal to sell or supply to particular persons specified goods or services which are available and normally offered to third parties.*

A refusal to enter into commercial dealings with a particular person may have justifications such as ethical considerations or the need to maintain a measure of quality control. However, refusal to treat may be practised by a monopolist to block the expansion of other suppliers or to prohibit his customers from seeking other sources of supply. In the last-mentioned case the practice may be illegal.

Boycott

> *VI. An agreement among, or an invitation to, various economic agents to bring pressure to bear on a particular customer or supplier with a view to inducing him to refrain from a particular line of conduct, to taking reprisals or to forcing him to act in a particular manner.*

Boycotts are instruments for bringing pressure to bear on particular individuals and can consequently have both positive and negative effects on the competitive process. Many boycotts have non-economic aims such as consumer protection, protection of the environment and other aims which could only with difficulty have any effect on the competitive process. For instance, a group of stores may boycott a supplier of electrical equipment which does not comply with safety standards without such action having monopolistic effects. However, those same stores might collude to exclude from the market suppliers refusing to accept their decisions on prices; in such cases a boycott is very likely to be monopolistic in character.

Other practices

> *VII. In general, any act which unduly harms or impedes freedom of competition and the competitive process in the production, processing, distribution and marketing of goods or services.*

It is practically impossible to give a detailed description of every type of conduct which could have a harmful effect on competition, not only on account of the large number of cases existing, but also because patterns of commercial behaviour are constantly changing, with the implication that the law would always lag behind those changes. That explains the need for this general provision. However, its general character must be understood in the context of the Law. It does not offer carte blanche for discretionary action on the part of the Federal Competition Commission, since the evaluation processes required by law, where applicable, are strict and must produce conclusive evidence that the line of behaviour is anti-competitive. During the proceedings in the legislature which led to the adoption of the Law the conclusion was reached that the six monopolistic practices mentioned above comprise the principal and most commonly encountered activities. However, since there exists a possibility that a novel or peculiar type of practice may emerge, that possibility should be covered by legislation, while at the same time care should be taken to minimize the risk of uncertainty in economic activity caused by the intervention of the authorities, with the result that the legislature lays down lesser penalties for this particular case. It should be mentioned that in the countries with actively anti-monopolistic policies (a group which includes our principal trading partners) provisions of a much more general character on the forms of behaviour which may violate the law are in force; thus the new law does not in any way place economic agents carrying on their activities within Mexico at any disadvantage.

Does the Law constitute an obstacle to franchising?

No. Franchising systems generally include restrictions on those of their members who appear to be violating the law. However, in the great majority of cases these situations do not arise. In addition, the head of the Executive has promoted major changes in the legislation concerning intellectual property and authors' rights to facilitate the development of franchising systems as an instrument of modernization of the trading system. The Federal Act concerning Economic Competition does not constitute a change of orientation; rather, it reinforces the existing orientation in that it prevents abusive forms of behaviour for the benefit of a majority of economic agents.

III. EVALUATION OF RELATIVE MONOPOLISTIC PRACTICES

What is the procedure for determining whether or not a relative monopolistic practice exists?

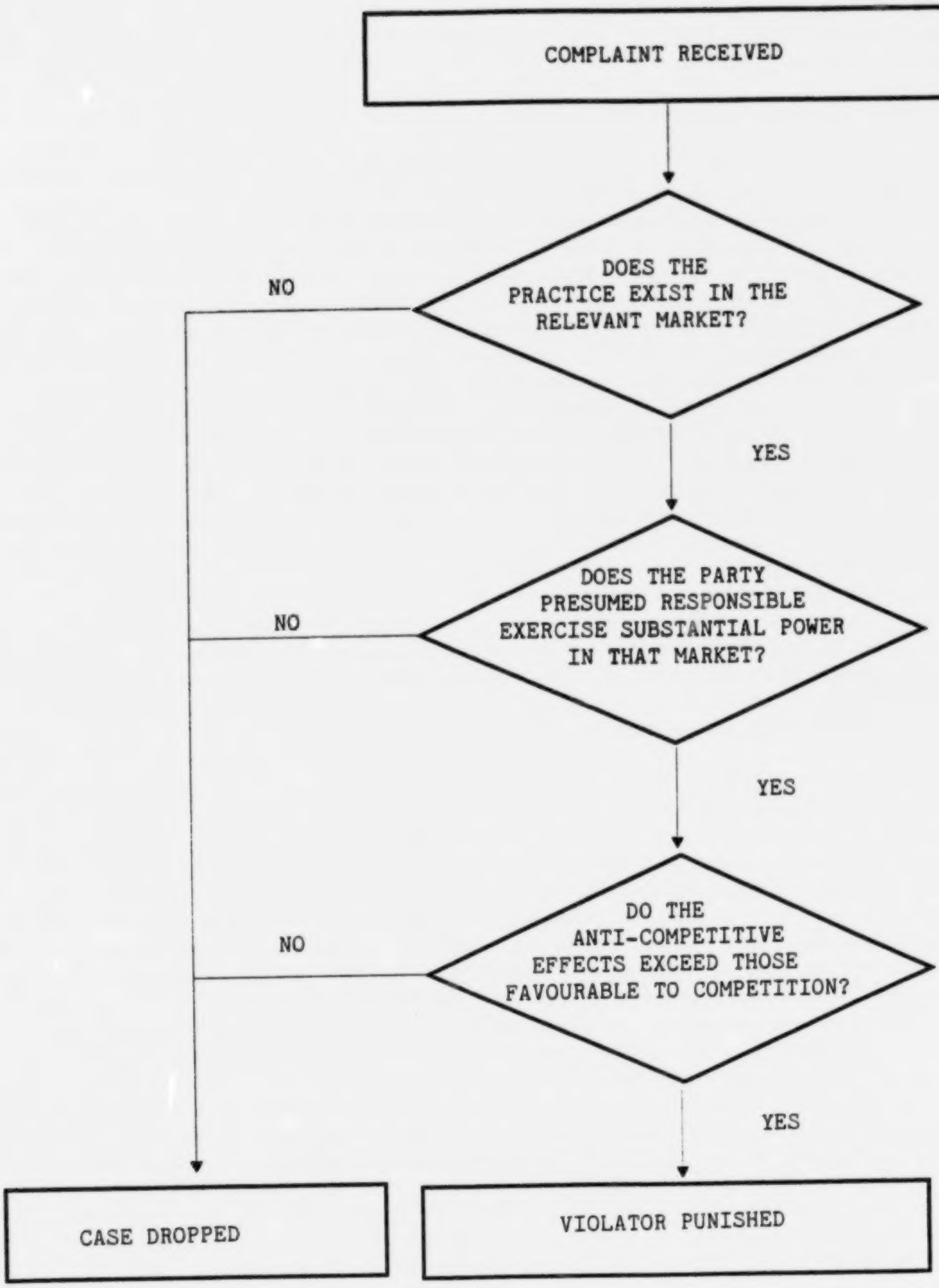
The Law states that, for a relative monopolistic practice to be unlawful, its purpose or effect must be wrongfully to eliminate other agents from the market, to impede substantially their access thereto or to create advantages exclusively benefiting one or more persons. The creation of barriers to entry and the establishment of exclusive advantages have the same effect, since the economic agents enjoying the protected market resulting from the existence of those barriers or advantages can act in a monopolistic fashion. However, the decision on whether a practice is "wrongful" depends, not on the discretion of the authorities, but on the criteria laid down in the Law itself.

What are the steps taken by the Commission in its analysis?

The process of evaluation of relative practices consists of the application of a series of levels of evaluation in which each element of analysis helps to distinguish between a practice which is probably monopolistic and one which promotes efficiency. In the latter case it may be legitimate. These levels of evaluation ensure that only those practices are sanctioned which are demonstrated to be more of an obstacle than a stimulus to competition. The procedure is outlined in table 1.

The first step taken by the Commission on receiving a complaint is to study the relevant market to determine the probable impact of the practice. If at this stage it becomes apparent that the practice occurs in a very small segment of the market, the Commission will dismiss the case. For instance, if a good is freely traded on international markets and the domestic price does not consistently differ from world prices, it is unlikely that any monopolistic practice exists. However, if there is a substantial price differential, the market is probably being manipulated. The Commission will therefore proceed to evaluate the power in the market of the party presumed to be responsible; this is the second level of investigation. If it emerges from this analysis that the party presumed responsible does not in fact enjoy substantial power in the relevant market, the case will be dismissed and the practice may continue. If the opposite is the case, proceedings will continue and investigation will begin at the third level, namely an analysis of the effects which that practice has on freedom of competition and the competitive

TABLE 1. PROCEDURE FOR REVIEW OF RELATIVE PRACTICES


COMPLAINT RECEIVED
DOES THE PRACTICE EXIST IN THE RELEVANT MARKET?
NO
YES
DOES THE PARTY PRESUMED RESPONSIBLE EXERCISE SUBSTANTIAL POWER IN THAT MARKET?
NO
YES
DO THE ANTI-COMPETITIVE EFFECTS EXCEED THOSE FAVOURABLE TO COMPETITION?
NO
YES
CASE DROPPED
VIOLATOR PUNISHED

process. In the light of the findings of this analysis, the practice in question will be allowed to continue if it has no anti-competitive effects or if such effects are insignificant in comparison with its positive effects. If a breach of the law is established a cessation of the practice may be ordered and fines may be inflicted; in addition, the parties affected may seek damages through civil proceedings.

How is "the relevant market" defined?

"The relevant market" is the one in which the practice is established as existing and is the market for the good or service in question. A market generally has three dimensions - the product dimension; the geographical dimension; and a dimension in time. The first dimension relates to the identification of a product in relation to others. It involves determination of the extent to which consumers consider that two goods or services are so equivalent or similar to one another that if the price of one of them were to increase, or the supply thereof to decrease, they would be ready to consider the other good or service as a substitute. The geographical dimension of the market relates to the scale of production and distribution of goods and services; this is closely linked to the possibility of supplying a particular market from other regions. This dimension is not restricted by national or State frontiers, since for certain products high transport costs or the existence of artificial trade barriers mean that the market concerned is confined within a very small area, whereas for others the opposite is the case and supplies may come from distant regions, including other countries. Generally speaking, external competition will be an important criterion in the definition of the relevant markets. Finally, supplies from other regions must be timely, so that the effects of a relative monopolistic practice on prices and supplies are only temporary. The time dimension becomes relevant here.

Are there statistical rules for market measurement?

No. There will be a uniform procedure and continuity in the decisions of the Commission, but there are no statistical rules for the assessment of enterprises. Measurement of the size of the market concerned is of particular importance for each case, since a given practice may or may not constitute a breach of the law according to the circumstances in which it occurs. In other words, if a practice reduces the number of competitors dealing in a particular good, but that good can conveniently be replaced by products which, generally speaking, are considered equivalent or similar to the goods or services in question - with the result that no adverse effect on prices or supply emerges - then that practice will not be illegal. For these reasons, in the analysis of the relevant market, certain factors will be taken into account such as the existence of artificial barriers (for example, customs duties, technical norms and plant and animal health regulations) or natural barriers (such as high transport costs or ease of substitution of goods) impeding freedom of trade in goods and services, or which raise their production or distribution costs above the levels which would enable them to compete in the market. One must also emphasize the importance of supplies from other regions or countries. For many goods the removal of trade barriers has resulted in an expansion of markets; consequently, this factor must be taken into account in the evaluation.

What is meant by the statement that an enterprise enjoys substantial power in the relevant market?

For a relative practice to be designated as monopolistic, proof must be advanced that the party presumed responsible has substantial power over the market. The variety of markets, and the many features which distinguish them from one another, are so numerous and varied that it is not always possible to use a single criterion to determine whether substantial power exists. The share of the enterprise concerned in total sales on the market is an important criterion; but it will not be the only one, since the situation will differ according to whether the presumed violator has, to take a figure, 60 per cent of the market and is faced by 10 other small competitors or just one. In addition, in the measurement of substantial power other criteria will be taken into account, such as whether the party presumed to be responsible has the ability to fix prices unilaterally or to restrict considerably the supply of the goods or services in question without the competitors being able to counter that power; whether there are natural or artificial entry barriers; the ability of the competitors to obtain access to other sources of inputs; and the recent behaviour of the party presumed responsible, since this may be a good indicator of his ability to act unilaterally.

IV. CONCENTRATIONS

What will policy be with regard to concentrations?

The concern of the Law with concentrations of enterprises derives from the fact that recourse to monopolistic practices may be promoted or facilitated through them. The size of an enterprise does not of itself imply that that enterprise is acting monopolistically.

Is there any relationship between "concentrations" and "monopolistic practices"?

The Law requires the Commission to evaluate concentrations applying the concepts of "the relevant market" and of "substantial power in the relevant market" - the same concepts as those used to evaluate relative practices. The Commission may oppose an arrangement only when it constitutes a significant threat to competition in a market.

Do concentrations have to be notified?

The Law lays down a preventive policy with regard to mergers and acquisitions. Major operations must be reported to the authorities before they actually take place; similar requirements are in force in Canada, the United States, Japan, Australia, New Zealand and nearly all the countries of the European Community. The reason is to prevent, before they actually take place, concentrations which can clearly have harmful effects on competition. The requirement of prior notification improves the safety of the legal position of enterprises, since once the authorities have evaluated and approved a concentration, the Commission cannot oppose it or attempt to reverse it. However, this does not mean that an enterprise taking part in a concentration of which notice has been given and has not been objected to by the authorities is authorized to have recourse to monopolistic practices.

When must notification be effected?

The Commission must be notified of concentrations implying transactions in amounts exceeding the ceilings laid down by the Law, or by means of which more than 35 per cent of the shares or assets of an economic agent are acquired. The circumstances in which an operation must be submitted to the Commission for consideration are shown in table 2.

TABLE 2

CONCENTRATIONS PRIOR NOTICE OF WHICH MUST BE GIVEN

Condition	Reporting necessary
The operation consists of new investment in an enterprise	No
The operation consists of purchase, merger, takeover or any other similar operation involving existing enterprises	If the response to any of the three points below is affirmative, the operation must be notified
A. The operation involves an amount greater than the equivalent of 12 million times the general minimum wage in force in the Federal District (approximately 171 million new pesos)	
B. The operation, or a series of successive operations, giving an enterprise control of 35 per cent of the assets or shares of an economic agent the value of whose assets or sales exceeds the equivalent of 12 million times the general minimum wage in force in the Federal District (approximately 171 million new pesos)	
C. The operation involves two or more enterprises whose annual sales or assets together amount to more than the equivalent of 48 million times the general minimum wage in force in the Federal District (approximately 685 million new pesos) and the transaction implies an additional accumulation of assets or share capital in excess of the equivalent of 4.8 million times the general minimum wage in force for the Federal District (68.5 million new pesos)	

What happens if notification is not given?

Transactions not falling within the terms of table 2 are also subject to the Law, but it will not be necessary to give prior notification thereof to the authorities. However, they may be challenged by the Federal Competition Commission if they are harmful to freedom of competition or the competitive process. This possibility will become statute-barred one year after completion of the operation; thus, the Federal Competition Commission will be unable to challenge operations which took place more than 12 months before its formal establishment.

What procedure will the Commission follow in reviewing concentrations?

The procedure for the review of concentrations which the Commission will follow is outlined in table 3. Economic agents wishing to effect a concentration not requiring notification may proceed. Other cases must be notified to the Commission; the latter will analyse the information available and may request additional information if it so requires. Subsequently the Commission will hand down its decision, which may be positive, negative or subject to conditions. In the last-mentioned case, to complete the operation the individuals concerned must carry out the changes required by the Commission before undertaking the operation. The conditions may relate either to measures accompanying the operation or measures to be taken after its completion. Where the decision is affirmative, the operation may be carried out immediately.

What time-limits are set by the Law for the issue of decisions?

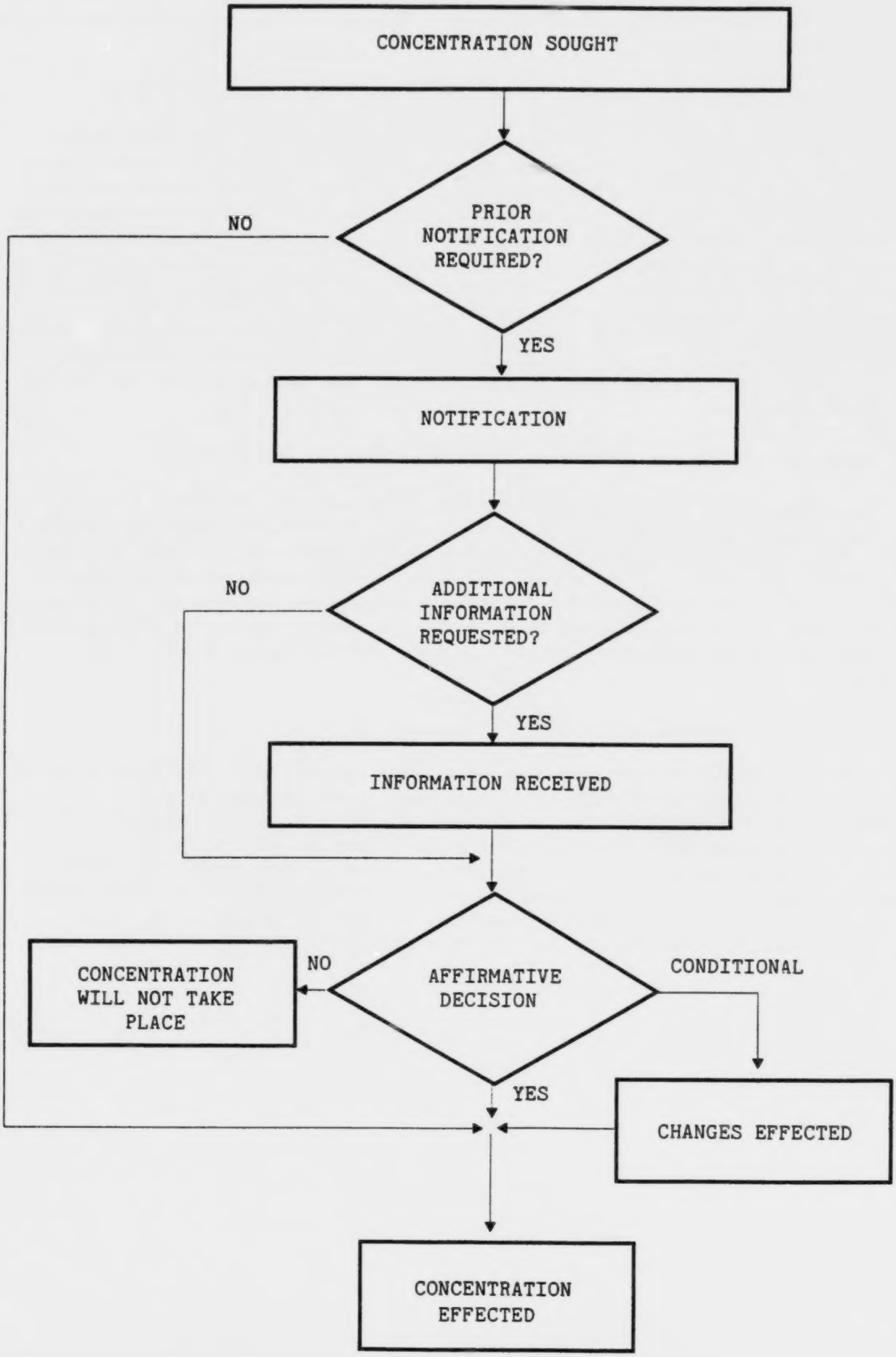
In cases where prior notification is required, the authorities will have 45 calendar days to issue their decision. In complex cases the Federal Competition Commission may extend this period by a further 60 days for analysis of the case. In addition, the individuals concerned will have 15 days to reply to requests for information from the Commission. Thus the simplest cases will be dealt with in 45 days or less, while the most complex ones may require up to approximately 260 days before issue of the final decision.

What are the grounds for decisions?

The obligation of notification in no way implies that the concentration sought will be classified as harmful to competition or that it will necessarily be challenged. The only implication is that the authorities will be required to undertake an evaluation with a view to analysing how it affects, or might affect, the competitive process in the market in which it is to be effected. The intent of the Law is to prevent, before it takes place, any concentration which might have harmful effects on competition. Our principal trading partners also apply this policy.

TABLE 3

PROCESS OF REVIEW OF CONCENTRATIONS


CONCENTRATION SOUGHT
PRIOR NOTIFICATION REQUIRED?
NO
YES
NOTIFICATION
ADDITIONAL INFORMATION REQUESTED?
NO
YES
INFORMATION RECEIVED
CONCENTRATION WILL NOT TAKE PLACE
NO
AFFIRMATIVE DECISION
CONDITIONAL
YES
CHANGES EFFECTED
CONCENTRATION EFFECTED

Tacit consent

The procedure to be followed by the Commission ensures speedy completion of the evaluation of concentrations, since there are time-limits for evaluation within a legal framework of "tacit consent" or "administrative silence". In other words, if by the expiry of the period stipulated by the law the Commission has not issued a decision concerning an operation, the latter can no longer be objected to. In addition, the time-limits fixed by the Law are similar to those established for the evaluation of concentrations in other countries; thus concentrations of Mexican enterprises will no longer be disadvantaged on account of being subjected to slow administrative processes.

V. THE FEDERAL COMPETITION COMMISSION

Who are the members of the Federal Competition Commission?

The Commission consists of five commissioners (including its president), who are appointed by the head of the Federal Executive. The commissioners must, among other things, be persons of high professional standing in fields with a substantive relationship to the purposes of the Law. Commissioners are appointed for 10 years, and may only be removed from office on serious grounds; this will help to give continuity to competition policy.

What are the functions of the SECOFI?

The SECOFI has no functions relating to the implementation of the Federal Law concerning Economic Competition other than those assigned to it by law in the field of maximum prices. The Commission forms part of the SECOFI, but, as provided by the Law, it retains full operational and technical autonomy vis-à-vis that institution and all other bodies. The implication here is that the decisions and resolutions of the Commission are subject only to the evaluations and investigations carried out by the Commission in accordance with the Law.

Are there any risks with regard to confidential information?

The information and documents obtained directly by the Commission during the course of its investigations, as well as those submitted to it, are strictly confidential. This confidentiality also covers the information obtained when an economic agent gives notice of a concentration operation. Public servants are liable in respect of disclosures of information except where this is done on an order of the competent judicial authority.

What other functions does the Commission have?

The Commission may express its views on the impact on economic competition of laws, regulations, circulars and other instruments or draft legal texts and on any measure taken by the administrative authorities. These views will not have any binding effects, but will serve to define the areas in which laws, regulations or administrative measures are creating or giving rise to problems of competition. In this way the economic deregulation policy is institutionalized and the negative secondary effects of regulations on the competitive process will be avoided.

How does the Commission function?

The supreme body of the Commission is the plenum, which consists of the five commissioners and is responsible for reaching decisions on the cases submitted by each commissioner as assigned to them by the President of the Commission and after the relevant files have been assembled by the directorates-general for economic studies, concentrations, investigations and legal affairs and disputes under the coordination of the Executive Secretary.

VI. PROCEEDINGS, PENALTIES AND APPEALS

Who may make complaints?

In cases of absolute monopolistic practices, any person; in cases of other practices, concentrations or acts which are prohibited or restricted by law, the person affected may report the party presumed responsible to the Commission in writing, indicating the nature of the practice or concentration. Complaints must be submitted to the Commission, since no proceedings of a judicial or administrative character may be introduced on the basis of the Law other than those provided for in the Law itself.

Will this Law not give rise to excessive numbers of disputes, as has happened in other countries?

Only individuals directly affected by a relative practice may take action against suspected violators; this will prevent ill-founded complaints which impede the development of enterprises or complaints the subject-matter of which is dealt with in other legal instruments. In other words, the Federal Act concerning Economic Competition contains provisions designed to ensure that disputes of a civil or commercial character are not dealt with under competition legislation.

What time-limits does the law set for proceedings?

Once the complaint has been received in accordance with the Law the party presumed responsible will be officially notified; he will have 30 days to produce all appropriate material in support of his case. Once all the evidence has been submitted, the Commission will fix a period not exceeding 30 days in duration for the preparation of arguments. Once all the evidence is available, the Commission will have not more than 60 days to issue its decision. The time-limits applicable to the investigation of concentrations vary according to the case and may be ascertained in the department responsible.

What are the amounts of penalties?

The financial penalties applicable are as follows:

For making false statements or submitting false information to the Commission: a fine not exceeding 7,500 times the general minimum wage in force in the Federal District.

For engaging in absolute monopolistic practices: a fine not exceeding the equivalent of 375,000 times the general minimum wage in force in the Federal District.

For engaging in relative monopolistic practices: a fine not exceeding the equivalent of 225,000 times the general minimum wage in force in the Federal District; and for practices harmful to competition referred to in section VII of article 10 of the Law, a fine not exceeding the equivalent of 100,000 times the general minimum wage in force in the Federal District.

For entering a prohibited concentration: a fine not exceeding the equivalent of 225,000 times the general minimum wage in force in the Federal District.

For failure to give notice of a merger or acquisition in cases where notification is compulsory: a fine not exceeding the equivalent of 100,000 times the general minimum wage in force in the Federal District.

In the event of repetition of an offence, an additional fine may be imposed not exceeding twice the amount of the fine imposed in respect of the first offence.

If the case of a relative or absolute monopolistic practice or a prohibited concentration actually effected is particularly serious, the Commission may, instead of the fines mentioned above, impose a fine of up to 10 per cent of the annual sales of the violator during the previous fiscal year, or up to 10 per cent of the value of his assets, whichever is the higher.

Are the penalties excessive?

The fines are higher than under other legislative instruments. However, this is justified by the enormous profits which can be obtained by recourse to monopolistic practices and the harm they may cause to society. In addition, the purpose of the penalties is to act as a deterrent to monopolistic practices and prohibited concentrations. It should also be noted that they are similar to, or less than, the penalties provided for in the competition legislation of our principal trading partners, bearing in mind the relative sizes of their economies.

What other sanctions may be applied?

In addition, the following sanctions may be applied:

(i) The suspension, rectification or abolition of the practice or concentration in question.

(ii) The partial or total break-up of a concentration which is wrongful.

(iii) In addition, absolute monopolistic practices shall have no legal effect.

Does any liability exist on the part of executives or representatives of enterprises?

Executives of enterprises which participate directly in monopolistic practices or prohibited concentrations, representing or acting on behalf of and at the orders of moral persons, are liable to fines equivalent to 7,500 times the general minimum wage in force in the Federal District (approximately 114,000 new pesos).

What recourse exists against decisions of the Commission?

The Law provides for a right of appeal against decisions of the Commission consisting of an application for reconsideration addressed to the Commission itself. The purpose of such an application is to reverse, amend or confirm the impugned decision, and the submissions are to include the identification of the impugned act, the legal grounds invoked and the points of decision. The regulations appended to the Law will fix the time-limits and other requirements for transmittal and substantiation of the appeal.

ANNEX

GUIDE FOR THE INSTITUTION OF PROCEEDINGS

This guide gives the basic elements for the institution of proceedings. Its aim is twofold: first, to ensure that the measures taken by the Commission comply with the provisions of the Federal Law concerning Economic Competition; and secondly, to facilitate the institution of proceedings by individuals and to ensure that the elements mentioned do not hinder those who are entitled to the protection of the Law from seeking that protection.

Institution of proceedings

Before instituting proceedings before the Commission, the party concerned must determine whether his application is a formal complaint (or a notification designed to initiate formal proceedings which will lead to a decision with legal effects) or a request for an advisory opinion or information submitted to the Commission. If the former is the case, the party concerned must ensure that the notification or complaint refers to a case in respect of which the Law envisages the institution of proceedings and also identifies the type of behaviour or measure which he seeks to have sanctioned; as such, the submission must relate to:

- *A complaint concerning an absolute monopolistic practice;*
- *A complaint concerning a relative monopolistic practice;*
- *Prior notification for the purposes of effecting a concentration (where required);*
- *A complaint concerning monopolistic concentrations.*

To avoid dismissal of the submission or complaint on formal procedural grounds as manifestly inadmissible, the party concerned must ensure that his submission refers to a situation deemed by the Law to fall within the competence of the Commission. However, the foregoing does not prejudice the possibility of informing the Commission of possible facts which might give rise to an investigation initiated by the Commission itself regarding practices punishable under the Law, or of consulting the Commission regarding its procedures and the interpretation of the Law.

The Commission will receive communications of this type at its head offices. Replies to requests for advisory opinions addressed to the Commission are in no case binding and have no legal effects. Their purpose is to give the parties concerned guidance as appropriate with regard to future formal applications for the institution of proceedings with legal effects.

Notifications or complaints

All submissions to the Commission designed to institute proceedings with legal effects must -

(i) *Be presented in writing (in four copies), in the Spanish language, to the Commission registry, either by registered mail with acknowledgement of receipt or by hand at the registry offices;*

(ii) *State the name, address, telephone number and other elements giving the identity of the complainant and, where appropriate, of the respondent. Where appropriate, it must be accompanied by the relevant notarized powers or certificates;*

(iii) *Give the names, addresses and telephone numbers of persons authorized to hear and receive notifications and documents;*

(iv) *State the legal basis for the motion or complaint, referring to the applicable clauses or sub-clauses of the Federal Act concerning Economic Competition which lend support thereto;*

(v) *Indicate the date and place and be signed by the initiator.*

Absolute monopolistic practices

The law lays down specific conditions for the institution of proceedings against absolute practices. In addition to the general conditions regarding procedure mentioned earlier, it is essential that the type of absolute practice to which the complaint relates is specified. However, to avoid dismissal of the complaint on grounds of manifest inadmissibility, the latter should include the following:

- *A brief, clear and precise account of the facts presumed to constitute violations of the Federal Law concerning Economic Competition;*

- *Documentary evidence, statistics, accounting documents or studies supporting the complaint.*

Relative monopolistic practices

For cases of this kind the Law requires the complainant to submit elements defining the practices complained against and demonstrating that he has suffered or may suffer substantial harm or prejudice. Thus in addition to the general procedural requirements referred to in subparagraphs (i) to (v) above, the complaint must include -

- *The elements defining the practice or practices complained against;*

- *The elements evidencing the harm or prejudice suffered by the complainant.*

To ensure that the Commission does not dismiss a complaint on grounds of manifest inadmissibility, a complaint should include all information and evidence of a nature to support it. To that end consideration should be given to the type of behaviour and the circumstances which place it in breach of the law.

To enable the Commission to take up examination of complaints concerning relative monopoly practices, the admissibility of complaints is examined on the basis of the elements provided by the complainant. It is therefore desirable that a complainant should include in his complaint the greatest possible number of elements which will help the Commission to conclude that there is a sufficient basis for initiating proceedings. The nature of the elements provided, and their value, will vary according to the circumstances of the particular case. Among the elements which can help better to substantiate an application, the following are recommended:

- *A description of the characteristics of the market in which the practices presumed to be monopolistic are carried on, such as its size, its geographical extent and the degree of ability of consumers to substitute goods or services from another market, and other elements which it is considered may help the Commission in determining the relevant market, bearing in mind the considerations on the subject contained in section III of this booklet;*

- *The ability of the respondent to affect demand, prices and other market conditions (percentage share of transactions, current competitors and difficulties of entry experienced by new competitors). In this connection the points made in section III of this booklet concerning substantial power in the relevant market should be kept in mind;*

- *Determination of the harm suffered by the complainant, referring to costs incurred, the possibility of reducing the injury caused by alternative use of the expenditure incurred by the complainant and, where possible, a calculation of the probable amount of irreparable harm. Alternatively, elements proving that the practice can cause him substantial prejudice in the future.*

Appendix 1 contains a list of the conditions to be met by all complaints against relative monopolistic practices and of the specific elements it is considered desirable to submit in support thereof regarding a description of the facts or situations which form the subject of the complaint and the injury or prejudice suffered. When considering whether to admit a complaint, the Commission will evaluate the relevance of each argument in the context of the particular case. In certain cases a particular item or items of information are sufficiently significant to establish the admissibility of the complaint without any need to substantiate other aspects thereof, which can become the subject of consideration and analysis once the proceedings have begun.

Prior notification of concentrations

Since a concentration is not of itself illegal, only those concentrations are prohibited which by their nature are harmful to free competition and the competitive process. The Law states that in such cases, as in the cases of relative monopolistic practices, the Commission shall consider market conditions in relation to the activities of the enterprises taking part in the concentration and the probability of emergence of conditions prejudicial to the competitive process on account of an undesirable accumulation of substantial power to affect the market by means of anti-competitive practices. Notification shall be given in writing and shall be accompanied by the draft of the legal instrument establishing the concentration, the names of the persons or companies involved, their financial situations, their market share and other elements permitting cognizance of the proposed transaction.

Appendix 2 contains a list of the elements which must be included in the notification and of other elements which it is recommended should be included to enable the Commission to reach a decision without delay, without prejudice to the fact that information and evidence subsequently requested by the Commission must be provided in accordance with the obligation to do so. It should be noted that the Commission has established a model outline for this purpose.

Reporting of monopolistic concentrations

Monopolistic concentrations may be reported by parties affected by them; in accordance with the provisions of article 32 of the Federal Act concerning Economic Competition, such concentrations are subject to requirements similar to those applicable to relative monopolistic practices. It will be recalled that the Law does not prohibit concentrations as such but may prohibit individual concentrations on the basis of their monopolistic implications. The complainant must provide elements defining the presumed illegality of the impugned concentration and indicate the harm suffered or which may be suffered.

Dismissal of complaints which are manifestly inadmissible

The Commission seeks to facilitate proceedings taking place before it while at the same time guaranteeing compliance with the provisions of the Law. Consequently, when it dismisses a complaint on grounds of manifest admissibility, it will notify its reasons for doing so in order that the complainant may have more elements to enable him to submit, if appropriate, a new complaint concerning the same facts which meets the requirements for initiation of the appropriate proceedings.

Where dismissal on grounds of manifest inadmissibility relates to questions of form, that dismissal has no implications concerning the opinion of the Commission on the legality or illegality of the facts which form the subject of the complaint; thus a new complaint on the subject, in correct form, can be submitted. The purpose of this procedure, far from seeking to create obstacles, is to help those concerned to comply with the procedural requisites.

Appendix 1

Guidelines for the submission of complaints concerning relative monopolistic practices

1. The complaint must be submitted in writing (in four copies), in the Spanish language, either by registered mail with acknowledgement of receipt or by hand at the offices of the Federal Competition Commission at:

Tamaulipas No. 150
Col. Hipódromo Condesa
C.P.06140, México, D.F.

2. The complaint should state the name, address, telephone number and other elements giving the identity of the complainant and of the respondent. Where appropriate, it should be accompanied by the relevant notarized powers or certificates.

3. The complaint should give the names, addresses and telephone numbers of persons authorized to hear and receive notifications and documents as appropriate.

4. The complaint should give a brief, clear and precise account of the facts presumed to constitute violations of the Federal Law concerning Economic Competition.

5. The complaint should be accompanied by documentary evidence, statistics, accounting documents or studies supporting the complaint, preferably classified in relation to each of the facts or points reported.

6. Documents in foreign languages must be accompanied by translations into Spanish prepared by authorized experts. Where foreign public documents are submitted, these must be duly authenticated by the appropriate consular authorities.

7. The legal grounds for the complaint should be indicated. Such indications should match with the hypothetical cases given in the Federal Law concerning Economic Competition which describe the type of behaviour complained against.

8. The complaint should describe the elements which place the practice concerned in breach of the law and, where possible, offer proof thereof. To that end, data and documents may be included referring to:

8.1 A description of the market affected by the impugned practice, covering such matters as its size, its geographical extent, etc. (see the text referring to the definition of the relevant market in section III);

8.2 Elements creating a presumption that the respondent has the power to interfere substantially in the functioning of the relevant market, such as his level of participation in that market (viz. share of sales or purchases); any difficulties in substituting goods or services of other markets for those of the respondent; the existence of competitors to the respondent; ease of entry for new competitors (investments needed, regulations, etc.). It is recommended that the remarks made concerning substantial power in the market, which was discussed in section III, be kept in mind;

8.3 Statistics and accounting documents, or any other data or indications, in support of the matters referred to in the previous two subparagraphs.

9. A description, quantified and with supporting evidence where possible, of the harm which the complainant has suffered or may suffer, such as irrecoverable expenditure incurred and other elements considered to be relevant.

Appendix 2

Guidelines for the prior notification of concentrations

1. The notification must be submitted in writing (in four copies), in the Spanish language, either by registered mail with acknowledgement of receipt or by hand at the offices of the Federal Competition Commission at:

Tamaulipas No. 150
Col. Hipódromo Condesa
C.P.06140, México, D.F.

2. The notification should state the name, address, telephone number and other elements giving the identity of the parties concerned. It should be accompanied by the relevant notarized powers or certificates.

3. The notification should give the names, addresses and telephone numbers of persons authorized to hear and receive notifications and documents as appropriate.

4. In accordance with articles 16 and 20 of the Federal Act concerning Economic Competition, the party concerned must submit a clear, precise and detailed description of the concentration it is proposed to undertake, together with a draft of the legal instrument establishing the concentration.

5. The notification should be accompanied by all documentary evidence, statistics, accounting documents and economic studies justifying the notification, together with the financial situations of the parties concerned during the most recent financial year, their market shares and other elements permitting cognizance to be taken of the proposed transaction.

6. Documents in foreign languages must be accompanied by translations into Spanish prepared by authorized experts. Where foreign public documents are submitted, these must be duly authenticated by the appropriate consular authorities.

7. The notification should include elements establishing a presumption that the concentration does not contain within itself any significant risk that it may give rise to monopolistic practices - for example, shares in the markets affected, both prior to and resulting from the concentration; a statement of reasons for the concentration; the existence of actual or potential competitors; circumstances which may where appropriate facilitate the entry of new competitors (laws and regulations, minimum investments, etc.); the possibility of substituting goods and services from other markets for those offered (either because other sources are available nearby or because substitutes exist in the area covered by the markets affected); the possibility of importing the goods produced; and any other factor considered relevant.

It should be pointed out that the fact of submission of the notification automatically initiates proceedings, and also that respect of the time-limits within which the Commission should reach a decision will in each case depend on the submission, to the satisfaction of the Commission, of additional information and documents requested by it within the time-limits and under the conditions laid down in the Law. It is therefore desirable that the notification should be accompanied by adequate supporting evidence at the time of first submission.

It must be noted that the Commission has established a model outline for the notification of concentrations which can be obtained from the Commission itself.

III. Commentary by the Government of the Slovak Republic on Act No. 188: Protection of Economic Competition

A. Description of reasons for the introduction of the legislation

The first law against restrictions on competition in former Czechoslovakia was adopted in 1933. During the Second World War and after the introducing of a central planned economy by the communist regime the law against restrictions on competition (also called anti-monopoly law) disappeared from Czechoslovak law and order. In the beginning of the 1990s, after "The Velvet Revolution" against communist regime, when a market economy emerged in Czechoslovakia there was also a real need for substantial changes in the economic legislation. There was understood that competition, along with privatization and price liberalization is the most important feature of the transition to a market economy. More adequate satisfaction of consumer demand, stimulation of entrepreneurial activities and decentralized allocation of resources by the market would only be fully realized if enterprises acted under the pressure of competition. Therefore legal means for protection of competition and its further development were required. After almost 60 years break, in January 1991 former Czechoslovakia again adopted the anti-monopoly law. The 1991 law, based on the economic theory of workable competition declared illegal all agreements restricting competition (horizontal as well as vertical ones) without taking into consideration their actual impact on the market. All agreements on mergers or acquisition of control, if parties to agreement hold more than 30 per cent joint market share were illegal, too. The Antimonopoly Office could exempt some agreements restricting competition and mergers from this ban only in the way of an individual decision. These provisions were intended to increase legal certainty. However, shortly it was obvious that the law created too many obstacles for everyday business activities. Instead of promoting freedom of choice and healthy entrepreneurial risk, the law required businessmen to apply for exemption for agreements restricting competition, although they were mostly good, efficiency enhancing agreements. Mandatory notification of all agreements, including trivial agreements on research and development, or exclusive distribution, as well as notification of internal growth of the firm that reaches 30 per cent market share (it was meant to be a dominant position), were the most obvious examples of this approach. The shortcomings of the law led to its inability to effectively support further progress in the transition to a market economy.

After few years of the enforcement of this law, Slovakia, one of the successor States of the former Czechoslovakia has adopted a new anti-monopoly law. The new law came into force on 1 August 1994 and has abandoned former dogmatic approach to competition. It was worked out on the basis of a broad comparison of modern antitrust laws and economic theories. The law has minimized State's control of market processes only to the extent necessary to protect effective competition, but does not impose excessive requirements on the market actors. It tries to introduce an original model that is tailored for a small country with the economy in transition.

B. Description of the objectives of the legislation and the extent to which they have evolved since the introduction of the original legislation

The purpose of the new Slovak anti-monopoly law is a protection of competition by elimination of concerted or unilateral actions that unduly restrain competition. However, there is not the protection of competition in itself but the competition which contributes to the economic efficiency is the goal of the new law. Therefore the new law has introduced a balancing of the negative effects of restrictions on competition on the one side and their positive effects on the economy (in particular to consumers) on the other side. The approach is based on the current economic theories, in particular John Clark's effective competition and contestable markets theories. The basic feature of the new law is the consistent economic balance model. Consumer welfare (in the sense: society welfare) is the ultimate goal of the law. Competition should promote economic progress for the benefit of consumers. If economic agents act under competition, they can meet the needs of consumers at best because competition contributes to an effective allocation of resources. However, it is necessary to accept some restrictions on competition, if they produce an increase of the benefit of consumers. Therefore the appraisal of all types of restraints (agreements, abuse and mergers) is based on the balance between economic efficiency effects and harm to competition resulting from these practices. This is the main distinction to the 1991 law. But it should be noted that there is also an additional, to the consumer welfare subordinate objective of the law - a control of the economic power of dominant firms against its exploitative abuse.

C. Description of the practices, acts or behaviour subject to control, indicating for each:

(a) The type of control, for example: outright prohibition, prohibition in principle, or examination on a case-by-case basis

The new law prohibits in principle concerted actions in restraint of competition as well as unilateral abuse of a dominant position in the market. The law also sets forth detailed provisions for control of concentrations (merger and acquisitions). Thus, the law distinguishes two kinds of activities which constitute or may constitute an infringement of the rules of free competition. The former (concerted or unilateral restraints) are declared unlawful restrictions on competition, the latter (concentrations) are of different type of control - the office and prohibit them only in a specified case.

As it was mentioned above, competition is not regarded as an end in itself. There is no absolute ban on a particular agreement restricting competition. The law is based on the principle that if agreements comply with the criteria specified in the law, no ban on these agreements restricting competition can be applied. One can say that the concept is a mixture between the prohibition principle and the abuse principle (or in other wording per se rule and ex post control under rule of reason). There will be the legal presumption that agreement restricts effective competition unless the parties prove that criteria of the law are fulfilled (the harm on competition is outweighed by the increase in consumer welfare). It could be said that it is a "stricter" rule of reason approach (stricter because of the presumption of prohibition).

(b) The extent to which the practices, acts or behaviour in section D, paragraphs 3 and 4, of the Set of Principles and Rules are covered by this control, as well as any additional practices, acts or behaviour that may be covered, including those covered by controls relating specifically to consumer protection, for example controls concerning misleading advertising

1. The control under the anti-monopoly law covers all practices, acts or behaviour mentioned in section D, paragraphs 3 and 4, of the Set of Principles and Rules. Substantive scope of the law are so-called unlawful restrictions on competition and concentrations. The law declares unlawful two kinds of behaviour - concerted actions (agreements) that restrict freedom of conduct of market participants are illegal and void unless they are justified by the result of economic balance. Unilateral actions of dominant firms that represent an abuse of their position in the market are illegal, too. On the other side, concentrations (structural changes in the market) are not prohibited in itself, but they are submitted to the preventive control.

There are three types of concerted conduct referred to as "agreements restricting competition". The law stipulates a ban of agreements, concerted practices between entrepreneurs and decisions of their associations which have as their object or effect the prevention, restriction or distortion on competition. Horizontal as well as vertical restraints are covered by this prohibition. The ban applies also to agreements on transfer of the rights on protected (patents) as well as unprotected (know-how) subjects of intellectual property rights. These agreements are prohibited, if the restrictions on competition are not necessary for protection of the existence of these rights. The law also provides a non-exhaustive list of examples of "bad" agreements like price fixing, division of markets, limitation of production, etc. It is presumed that these cartel agreements will be almost always prohibited. However, the ban on all agreements restricting competition is not absolute. These agreements will be prohibited only if they prevailingly harm consumer welfare. The test of balance is based on four steps:

(a) whether the agreement improves production or distribution, or contributes to the technical and economic progress;

(b) whether users could obtain a fair share of the benefits;

(c) whether restraint is indispensable to the attainment of the benefits; and finally,

(d) whether competition (at least potential competition) in the relevant market will not be eliminated by these agreements.

If these conditions are being met, then the ban will not apply to agreements automatically. Thus, the law does not require notification of agreements restricting competition and the Antimonopoly Office will not grant any individual exemptions. However, entrepreneurs may, if they wish, apply for a decision whether their agreement complies with the conditions set out for the clearance. The clearance does not mean the exemption for an agreement, but it is only a certification that the agreement has been lawful ex nunc (from the date of its conclusion). The responsibility - burden of proof for the assessment of the anti-competitive effects of the agreements lies with the entrepreneurs. If they fail to prove the fulfilment of these conditions, their agreements which have as object or effect restriction on competition will be prohibited and void. Also the Office has the right to require entrepreneurs to prove that their agreements fulfil these conditions in individual cases, where a substantial restriction on competition is suspected.

The new law sets forth a general ban on an abuse of dominant position in the market. It contains a new definition of dominant position in the market based on broader economic criteria, not only a market share as in the old law. Dominance is a position in which a firm is not subject to substantial competition, or as a result of its economic power it can behave independently. There is also a presumption of dominance - 40 per cent market share, but it is rebuttable - an allegedly dominant firm can prove that it has no power in the market.

The abuse of dominant position is a unilateral conduct to the detriment of competition. It means "exclusionary" practice, like predatory pricing, discrimination or refusal to deal which harm competition in particular in upstream or downstream markets. As it was already mentioned above, these provisions also allow the Antimonopoly Office to control economic power of dominant firms. It is prohibited to exploit dominant position in the way which harms consumers' interest (e.g. enforcement of excessive trading conditions, or tying). However, the extent to which the "exploitative" abuse should be prosecuted is narrow and it will depend on the situation in the relevant market (e.g. where there exist high barriers of entry, there is no potential competition). The law also contains a non-exhaustive list of examples of abusive conduct, like direct or indirect enforcement of disproportionate conditions in contracts; restricting the production, sale or technological development of goods to the detriment of consumers; or applying different conditions for equal or comparable transactions to individual entrepreneurs in the market, which constitute a competitive disadvantage etc.

With regard to merger control the law introduces substantial changes. It has abandoned the former ban on merger agreements and stipulation of their voidness. A new term "concentration" covers mergers and acquisitions of control, including creation of joint ventures. The law sets out two thresholds for the control - either SKK 300 million (which is approximately US$ 10 million) combined worldwide turnover of the participants, or 20 per cent market share in the relevant product market and in the geographical market of the whole of Slovakia (for certain industries where turnover is difficult to calculate). As a result of it, the Antimonopoly Office will not control small local mergers. The new law makes more simple the issue of joint ventures. Joint ventures over these thresholds will always be subjected to the merger control, if they are "full-function" enterprises (it means that the joint venture involves material and personal means of business, as well as it is presented in the market as a separate economic entity), although they would lead to coordination of competitive behaviour between parents. This solution of the joint venture problem brings the bright line between cartel-type and merger-type joint ventures, which is required by the entrepreneurs as well as the Office.

The concentrations above the threshold are subject to preventive control. Parties have to notify concentration within 15 days after conclusion of the agreement or acquisition of control. Completion of concentration will be suspended during one month after its notification. Only in the special cases (e.g. purchase on the stock exchange) operation must be notified after its consummation. Administrative proceedings begin with submission of the notification and must end within one month, or in prolonged three months time period, respectively.

A criterion for decision on concentration is again the balance between harm on competition - creation or strengthening of a dominant position in the market on the one side, and economic advantages resulting from the concentration on the other side. The Office is required to approve the concentration if their participants show that harm on competition will be outweighed by the economic advantages of the operation (so-called efficiency defence).

2. Unfair competition, consumer protection laws.

The prevention and combating of unfair competition do not belong to the competencies of the Antimonopoly Office. Unfair competition is a separate body of law which enforcement is assigned to the courts. The Commercial Code contains provisions that prohibit unfair competition. The law protects fair competition in economic activities in the interests of entrepreneurs as well as consumers. Unfair competition is any action in contradiction with the law or good customs that threatens or violates the interest of other competitors or consumers (general clause). The Commercial Code contains a non-exhaustive list of actions that are regarded as unfair competition (e.g. false advertising, deceitful description of goods and services, bribery, discrediting or violation of business secrets). Persons whose rights have been violated or endangered by unfair competition behaviour may bring an action to the court. They may demand the violating person to abstain from his conduct and rectify the objectionable situation, compensate the damage, or forfeit the unjustified gains.

Although protection of consumers' individual economic interests is closely related to competition, consumer protection is a separate body of law, regulated by special law. This law imposes information duty on salesmen, prohibits sale of dangerous products, discrimination and deception on consumers and contains some restrictions of advertising (e.g. it prohibits advertising of tobacco products). The administration of consumer protection law is the responsibility of the other central State administrative body - Ministry of Economy.

D. Description of the scope of application of the legislation, indicating:

(a) Whether it is applicable to all transactions in goods and services and, if not, which transactions are excluded

The subject-matter of the new law are all economic activities. It means activities in production, distribution and consumption of goods or services unless they are undertaken only for individual purposes of natural persons. Such activities need not be carried on for profit. Transactions of intellectual property rights are also included.

Restrictions on competition are prohibited in all sectors of the economy. However, this law does not apply to some restraints, but only to the extent ensuing from special laws. Therefore, industries as a whole are not exempted from anti-monopoly law. There are particular restrictions on competition set forth by special laws that are necessary for the performance of the particular tasks of undertakings with special rights (e.g. law on postal services that created a monopoly in letter delivery) or restrictions which are the result of State regulation of the industry (e.g. law on National Bank of Slovakia that allows this bank to stipulate minimum or maximum interest rates for deposits or loans of commercial banks, or law on price regulation that stipulates special conditions of pricing for some goods and services). Because of restricted territorial scope of the law, export cartels are also excluded, unless international treaties binding for the Slovak Republic state otherwise.

The law also applies to administrative activities of the State and local administrative bodies. When performing their administrative tasks they are also obliged not to prevent, restrict or distort competition. Competition could be restricted by ministerial decree, administrative decisions or direct support of a particular entrepreneur (so-called State aid). But the anti-monopoly procedure in these cases is different. There is no duty of the Office to take any action against these restraints. Based on evidence and an assessment of the anti-competitive effect, the Antimonopoly Office may require State administrative authorities or municipalities to remedy the state of affairs on its own initiative (see art. 18). The law also assigns to the State and local administrative bodies particular responsibilities in the process of privatization (see arts. 19 and 20). They are required to secure appropriate deconcentration of the privatized enterprises which were State or municipal property. A competitive market structure is shaped primarily through the relevant ministries. The Antimonopoly Office provides only comments to their proposals of privatization decisions of the Government.

(b) Whether it applies to all practices, acts or behaviour having effects on the country, irrespective of where they are committed

With regard to the territorial scope of application of the law, all practices, acts or behaviour having effect on the Slovak markets are covered, irrespective of where they were committed or carried on. As a result of this so-called effects doctrine, the law also applies on behaviour of domestic or foreign firms taking place abroad, if it would lead to a restriction on competition in the territory of Slovakia.

As to the persons covered, various types of entities are included in the subjective scope of the new law: entrepreneurs, other natural or legal persons participating in market relations, including State-owned firms as well as governmental and local bodies (in their economic activities, e.g. when acting as a buyer). Foreign persons have the same rights and duties as domestic ones. Individuals (natural persons) are excluded from the scope of the law when acting as ultimate consumers. The term "entrepreneur" is used for each of these entities. However, it has a different meaning as the same term used by Commercial Code (where it means persons engaged in business activities only on the basis of an authorization). Therefore for the purpose of the anti-monopoly law a particular, more extensive definition of the term "entrepreneur" is adopted. It means that an entrepreneur is every independent subject (able of independent decision-making) with legal subjectivity, focused on activities of business or economic character, who participates in market relations either on the side of supply or demand. First of all there are companies and businessmen. The new law also applies to inventors, artists and authors if they are involved in economic activities - in particular there are agreements on transfer of their rights to protected subjects on other persons. Subjective scope of the new law is also extended to associations of entrepreneurs because of their possible anti-competitive decisions. Public institutions including the State (State administrative bodies) are considered to be entrepreneurs within the meaning of this law, provided they are engaged in economic activities (e.g. if they act as buyers in the market). It should be noted that public institutions (State and local bodies) are also obliged to follow the law when performing their sovereign, administrative tasks.

(c) Whether it is dependent upon the existence of an agreement, or of that agreement being put into effect

The law has dealt with a notion "agreement restricting competition". Various types of actions - agreements, concerted practices and decisions of associations are included in this notion. An agreement does not only refer to legally binding contracts. A concerted practice is conscious coordination of the entrepreneurs' behaviour which does not reach the level of an agreement and which, with regard to surrounding circumstances cannot be evaluated as the natural copying of the rival's conduct. A decision of an entrepreneurs' association is any act of the body of the association which binds all members, as well as any non-binding recommendation of the association which leads to restrictions on the competitive behaviour of the members. The agreement restricting competition is prohibited and void, regardless of whether it is being put into effect or not. Pursuant to article 3 of the law there are prohibited concerted actions that restrict or are likely to restrict effective competition.

E. Description of the enforcement machinery (administrative and/or judicial), indicating any notification and registration agreements, and principal powers of body(ies)

There are basically two bodies in Slovakia which are responsible for competition policy: the Antimonopoly Office and the courts of law.

The Antimonopoly Office of the Slovak Republic is a central State administrative body responsible for the enforcement of the anti-monopoly law. The Antimonopoly Office is headed by a chairman who is appointed and recalled by the Government. The chairman is authorized to act in the name of the Office in general. The Office has four specialized executive divisions headed by directors who manage the activity of the Office in particular industries. The scope of duties of the Antimonopoly Office covers control of agreements restricting competition and abuse of a dominant position in the market, as well as control of concentrations, supervision of the administrative activities of the State and local administrative bodies whose actions may restrict competition, identification and elimination of market entry barriers, promotion of competition in privatization process. The Office has extensive investigatory powers. It may request from entrepreneurs all materials and information which are necessary for activities of the Office, in particular business records or legal documents, or it may ask for oral or written explanation on the spot. The Office may also request from other State administrative bodies materials and information about the entrepreneur, which are protected by special laws. As it was noted above, there is no mandatory notification or registration of agreements restricting competition.

Enforcement of the anti-monopoly law takes place in the form of administrative proceedings conducted by the Office. The procedure is governed by provisions of the Administrative Procedure Act unless the anti-monopoly law stipulates otherwise. The Office may begin the proceedings on a petition of an entrepreneur or on its own initiative. Thus, consumers (individuals) do not have standing to request the initiation of proceedings; they can of course bring any matter to the attention of the Office suggesting commencement of proceedings on its own initiative.

The Office may stop the proceedings, if the petitioner does not complete petition or does not submit other requested documents and information, or petitioner does not pay an administrative fee, or reason for proceedings did not exist or ceased to exist, respectively. In any other case the Office is obliged to proceed if the petitioner maintains its request. Proceedings are inquisitorial, non-public and mostly held in written form. If the nature of the case requires, the Office makes its decision following an oral hearing, to which the participants must be invited. In all cases, though, before the decision is taken, the participants have the right to make submissions on the subject-matter of the proceedings and on the outcome of investigations carried out by the Office. During the proceedings the Office may issue a preliminary ruling, if it is necessary to safeguard legitimate interests or if execution of the final decision would otherwise be thwarted or seriously hampered.

Following the investigative procedure the Office may issue a finding that the agreement restricting competition is prohibited and void, or that a behaviour is prohibited because of an abuse of dominant position. It may also issue a cease and desist order with respect to these anti-competitive practices, or prohibit completion of concentration. The Office is entitled to fine entrepreneurs; it may assess the fine in its own discretion, up to 10 per cent of the annual turnover of the wrongdoer. However, if it is proved that the entrepreneur obtained material profit from breaching a law, the fine must be at least equal to this profit. There are also special provisions of the law which set out fines for non-compliance with procedural rules and a failure to comply with a decision of the Office, as well as the delay in payment of the imposed fine. There is no possibility to impose administrative sanctions (fines) on individuals.

If the participants in proceedings disagree with the decision of the respective director of the executive division of the Office, they can appeal to the Chairman of the Office within 15 days from the date on which the decision was delivered to them. Properly submitted appeal have a suspensive effect. The appeal is analysed by a special advisory committee that proposes a final decision of the Chairman. The Chairman may confirm the first instance decision, or he may amend it, or cancel and return it back to the executive division of the Office for the new investigation and deciding; in such a case director of the executive division is obliged to follow the legal opinion of the Chairman. The decision of the Chairman is final. However, participants still being dissenting with the decision, may bring an action to the Supreme Court to review this decision from the point of view of its legality. The action may be brought to the Supreme Court within 30 days from delivery of the Chairman's decision. The action has no suspensive effect as regards an enforcement of a particular decision of the Office. The Supreme Court will dismiss the action if it finds out that the decision is in accordance with the law. If the court finds out that the decision is not correct from the legal point of view, or the matter of act is not completely proved, or is unclear or insufficient, it cancels the decision and returns it to the Office's first instance body. The legal opinion of the court is binding for the Office.

Civil courts are also responsible for enforcement of the anti-monopoly law. Claimants who are only eligible to bring civil suits in the court are consumers (individuals). Only consumers may require the court to order the violating party (entrepreneur) to refrain from anti-competitive behaviour or to remedy the breach (to restore previous conditions). The civil law also provides for claims for damages or unjustified material gains to be pursued in a court, pursuant to the relevant provisions of the Civil Code. As regards these claims, every injured person (entrepreneur as well as consumer) may bring an action to the respective civil court.

The Supreme Court of the Slovak Republic deals with the appeals made against the decisions of the Chairman of the Antimonopoly Office. Its authority ensues from provisions of the Civil Procedure Code on judicial control of administrative decisions.

State prosecutors and criminal courts are responsible for applying criminal sanctions against natural persons responsible for offences against abusive participation in competition (violation of the anti-monopoly and unfair competition laws) pursuant to the Penal Code.

F. Description of any parallel or supplementary legislation, including treaties or understandings with other countries, involving cooperation or procedures for resolving disputes in the area of restrictive business practices

Besides the anti-monopoly law, there are the following supplementary laws regulating competition:

- The Commercial Code contains general provisions on competition;

- Pursuant to the law on investment companies and investment funds, an approval of the Ministry of Finance is needed for creation, merger or division of investment companies or investment (mutual) funds, or for takeover of them by another investment company or fund. The authority of the Antimonopoly Office applies parallel;

- Pursuant to the law on banks prior consent is required of the National Bank of Slovakia for merger of banks, or acquisition of shares in an existing bank by another person. The anti-monopoly law applies parallel.

- Pursuant to the law on prices it is prohibited to misuse economic position with the aim to obtain inappropriate economic benefit from a contracting party (excessive pricing). The Ministry of Finance is responsible for enforcement of this law.

Slovakia has concluded several international agreements relating to competition matters that include procedures for cooperation with foreign competition agencies. There are in particular:

- The Europe Agreement (it will come into force on 1 February 1995; at the time being only Interim Agreement) on association of Slovakia to the European Union. The agreement governs the scope, principle and rules of protecting competition against restraints of trade between the European Union and Slovakia. The parties to the agreement will exchange information, taking into account the limitations imposed by the requirements of business secrecy. There are so-called implementing rules for the application of the competition provisions of the Europe Agreement, agreed between the competition agencies of the EU and Slovakia;

- Trade agreement between Slovakia and EFTA countries;

- Central European Free Trade Agreement (parties to the CEFTA agreement are Czech Republic, Hungary, Poland and Slovakia);

- The Agreement on Custom Union between Czech Republic and Slovakia. Parties are obliged to coordinate their competition laws and policies.

All these agreements contain provisions modelled to articles 85, 86 and 92 of the Treaty establishing the EEC and call for consultation and coordination in the event that an anti-monopoly investigation in one country is likely to affect important interests of the other country.

G. Description of the major decisions taken by administrative and/or judicial bodies, and the specific issues covered

At this time there are no important decisions taken according to the new law provisions. However, there are important decisions of the Office or the Supreme Court which explain anti-monopoly law from 1991 and could also facilitate the enforcement of the new law (e.g. notion of concerted practices, definition of relevant market, evaluation of joint ventures, etc.). There are as follows:

1. "OMV/Highway Administration agreement" - unlawful restriction on competition was found in a lease contract between company running gasoline stations and the administrator of a highway. The latter promised not to build or not to permit building of any gasoline station by third persons within a strictly defined territory, where the station of the former exists. It was found out that a particular part of the highway represents a separate relevant market. The company obtained through the agreement a monopoly position in the concerned territory and potential competition was eliminated (decision of the Office from 1991, affirmed by the Supreme Court);

2. "Chemical fair Incheba" - the Office banned abuse of dominant position of the company that had organized chemical fair in Bratislava and had tied and applied different sales conditions to exhibitors. The key issue was a definition of relevant market (decision of the Office from 1992, confirmed by the Supreme Court);

3. "Gasoline cartel" - ban on concerted price fixing in distribution of gasoline between two major firms in the market. The exchange of information on future pricing between competitors, although their contact did not reach a stage of an agreement is prohibited by the law. The decision was based on the fact that the information exchanged was important for the future competitive conduct of the firms, which acted in a high concentrative market (decision of the Office from 1993, affirmed by the Supreme Court);

4. "Eurotel joint venture" - an agreement on creation of a joint venture including a non-competition obligation of its parents (potential competitors) is a merger, not a cartel agreement. Non-competition clause does not establish a separate cartel agreement, but it is an ancillary restraint to merger agreement (decision of the Office from 1994);

5. "Cement cartel" - ban on concerted division of market and concerted price fixing between all Slovak producers of cement and imposed record fines (decision of the Office from 1994).

H. Short bibliography citing sources of legislation and principal decisions, as well as explanatory publications by the Governments, or legislation, or particular parts thereof

The Act No. 188/1994 Collection of Laws on Protection of Economic Competition was published in the Collection of Laws of the Slovak Republic (Official Journal), part 53 of 29 July 1994;

The Act No. 513/1991 Collection of Laws (Commercial Code) which deals also with unfair competition was published in the Collection of Laws of the Slovak Republic, part 98 of 1991;

The Act No. 624/1992 Collection of Laws on Protection of Consumers was published in the Collection of Laws of the Slovak Republic, part 130 of 1992;

Annual reports of the Antimonopoly Office of the Slovak Republic for the years 1991-1994 were published by the Office in Slovak and English. Copies are available on request.

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IV. Commentary by the Government of the Republic of Zambia on the Competition and Fair Trading Act No. 18 of 1994

A. The Competition and Fair Trading Act No. 18 of 1994 is the only legislation in Zambia giving the courts jurisdiction to review a contract or conduct which is "anti-competitive" or "unfair".

B. Underlying this development was the fact that the economy was not performing efficiently in terms of production of goods and services due to the existence of monopolies and other concentrations of economic power and the belief that inequality of bargaining power and overreaching had become a common feature of consumer transactions.

C. Anti-competitive trade practices

Any category of agreements, decisions and practices which have as their object the prevention, restriction or distortion of competition to an appreciable extent in Zambia.

(a) Outright prohibition of:

(aa) Trade agreements fixing prices between persons engaged in the business of selling goods or services or purchase of goods or services between persons or limit or restrict the terms and conditions of sale or supply or purchase between persons engaged in the sale of purchased goods or services.

(ab) Collusive tendering.

(ac) Market or customer allocation agreements.

(ad) Allocation by quota as to sales and production.

(ae) Collective action to enforce arrangements.

(af) Concerted refusals to supply goods and services to potential purchasers.

(ag) Collective denials of access to an arrangement or association which is crucial to competition.

(b) Control on a case-by-case examination:

(ba) Predatory behaviour towards competition including the use of cost pricing to eliminate competitors.

(bb) Discriminatory pricing and discrimination in terms and conditions in the supply of goods and services.

(bc) Making the supply of goods and services dependant upon the acceptance of restrictions on the distribution or manufacture of competing or other goods.

(bd) Making the supply of particular goods or services dependant upon the purchase of other goods or services from the supplier to the consignee.

(be) Imposing restrictions where or to whom or in what form or quantities goods supplied or other goods may be sold or exported.

(bf) Mergers, takeovers, joint ventures or other acquisitions of control whether of horizontal, vertical or conglomerate nature.

(bg) Colluding, in the case of monopolies of two or more manufacturers, wholesalers, retailers, contractors or suppliers of services, in setting a uniform price in order to eliminate competition.

(c) Prohibition in principle:

(ca) Unjustifiable exclusion from a trade association of any person carrying on or intending to carry on in good faith the trade in relation to which the association is formed.

(cb) Making of recommendations by a trade association to its members in regard to prices to be charged or the terms of sale.

Unfair dealing

Section 12 of the competition and fair trading prohibits any person from engaging in trade practices which are specified under this section as unfair trading. The definition of "person" includes an individual, a company, a partnership, an association, and any group of persons acting in concert whether or not incorporated. "Trade practice" means any practice related to the carrying on of any trade and includes anything done or proposed to be done by any person which affects or is likely to affect the method of trading of any trader or class of traders to the production, supply or price in the course of trade of any goods, whether real or personal, or of any service:

(a) Outright prohibition of:

(aa) Withholding or destruction of producer or consumer goods with the aim of bringing about a price reduction.

(ab) Excluding liability for defective goods.

(ac) Exemption clauses in warranties.

(ad) Misrepresentations.

(ae) Supply of defective products.

D. Scope of application of the Act

The Anti-Competitive Trade practices provisions apply to all practices, acts or behaviour whether or not those are embodied in an agreement so long as their object is to discourage competition in Zambia.

The unfair dealing provisions imply certain conditions as to quality, fitness for purpose and as to the exercise of due care and skill into all transaction in goods and services.

The only exemption to these provisions relate to such business or activity as the Minister may by statutory instrument specify.

E. Enforcement machinery

Part II of the Act establishes the Zambia competition commission to monitor, control and prohibit acts or behaviour which are likely to adversely affect competition and fair trading in Zambia.

The Commission has power to carry out, on its own initiative or at the request of any person investigations in relation to the conduct proscribed by the Act.

The Commission has an Executive Director, as Chief Executive Officer of the Commission. The Executive Director or any officer has powers under Part IV to seek from a court a warrant granting:

(a) Authority to enter any premises.

(b) Access to or production of any books, accounts or other documents relating to the trade or business of any person and the taking of copies of any such books account or other documents.

Offences under the Act are upon conviction liable to a fine not exceeding K10 million or imprisonment to a term not exceeding five years or both.

F. Not applicable

G. This is a very recent piece of legislation whose date of assent is 11 May 1994. There are no reported cases yet.

H. Comprehensive Study on the implementation of the policy was undertaken.

(Unofficial translation)

Annex I

LITHUANIA

Decree No.785 "The Law on Competition"

Regulations of State Price and Competition Office

I.General provisions

1. The State Price and Competition office shall be the executive body of the Republic of Lithuania in the fields of competition promotion and price policy (with the exception of direct state pricing control).

The State Price and Competition office shall develop and pursue the competition policy, exice control over unfair and competition restrictive activities within the territory of the Republic of Lithuania.

2. The activities of the State Price and Competition office shall be based on the Constitution of the Republic of Lithuania (The Provisional Basic Law), Law on Competition, Law on Prices and other laws, decrees and directives of the Government of Lithuania as well as these regulations.

The State Price and Competition office within its scope shall organize the enforcement of the Law on Competition, Law on Prices and other standard acts, generalize the ways of their application, provide proposals concerning the improvement of these laws and submit them to the Government of the Republic of Lithuania.

3. The State Price and Competition office shall be a legal person shall have the seal with the Lithuanian State Emblem and its name as well as accounts with the banks of Lithuania.

4. The representatives from separate districts of the Republic of Lithuania shall be included into the State Price and Competition office.

II. Objectives and functions of the State Price and Competition Office

5. The principal objectives of the State Price and Competition office shall be as follows:

5.1. formulation of the state policy which promotes competition and involves anti-monopolistic measures, participation in formulating the price policy which is directly regulated by state;

5.2. carrying out of supervising functions regarding the observance of the Law on Competition and Law on Prices, with the exception of direct price regulation implemented by the state;

5.3. coordination of the interests of both the Lithuanian economy and consumers by putting stop to:

5.3.1. abuses of dominant position;

5.3.2. anti-competitive agreements (coordinated activities) between economic entities;

5.3.3. restriction of competition by bodies of state authority and government;

5.3.4. activities of unfair competition;

5.3.5. unpermittable market concentrations;

5.4. provision of methodological and informational assistance regarding price and competition issues;

5.5. investigation of market structure, level of concentration and fluctuations of market prices;

5.6. interpretation of the Law on Competition.

6. The State Price and Competition office by realizing the commissioned objectives shall :

6.1. present proposals to the Government concerning formulation of the competition and price policy;
6.2. control application and execution of the Law on Competition and Law on Prices as well as other standard acts regarding the issues on competition and prices (with the exception of direct state pricing control);
6.3. prepare the draft laws and other standard acts on issues regarding competition and prices, within its scope make the examination of draft laws and other standard acts;
6.4. carry out investigations and prepare material concerning determination of dominant enterprises, abuse of dominant position, prohibited agreements, unfair Competition or mergers (amalgamations), provide proposals regarding charge of fines and application of sanctions upon violation of the Law on Competition as well as adoption of standard acts and submit them to the Competition Council for making decisions;
6.5. supervise and analyse the Lithuanian market structure, level of concentration, economic juncture, market price fluctuations and possibilities of meeting consumer needs, collect and analyse information about economic juncture of foreign markets, level of world prices and their dynamics, furnish information to state government institutions and interested economic entities;
6.6. supervise economic-financial activities of dominant enterprises;
6.7. present proposals to the Government regarding restructuring (splitting) of monopolic enterprises, which abuse dominant position;
6.8. within its scope provide methodological professional and informative assistance to legal and natural persons;
6.9. analyse written complaints of legal and natural persons on issues concerning competition and prices;
6.10. upon realization objectives and functions of the office organize and direct the work of its representatives in separate districts of the Republic of Lithuania;
6.11. upon investigation of problems related to competition and prices, maintain contacts with respective economic interstate organizations, foreign economic missions and international funds.

III. Rights and obligations of The State Price and Competition Office

7. The State Price and Competition office shall be entitled to:
7.1. from economic entities, government institutions and statistical organizations receive financial and other documents (or corresponding copies), information as well as oral or written explanations necessary for the realization of the objectives provided for in the regulations;
7.2. obligate dominant economic entities to notify in the established manner the State Price and Competition office about the prospective price change of goods and apply compulsory rules and order in establishing prices of goods;
7.3. within its scope issue standard acts;
7.4. publish information and carry on publishing-commercial activities regarding price and competition issues;
7.5. take part at the meetings of corresponding state government institutions, in which the issues in the field of competition and prices are discussed;
7.6. establish commissions and working groups comprising the representatives and specialists from ministries, other state institutions, local municipalities, scientific and training institutions as well as invite necessary experts and foreign specialists to analyse the issues regarding the work of the State Price and Competition office;
7.7. interpret the Law on Competition;
7.8. have the right to carry out market investigations and examinations according to the orders of economic entities and other natural and legal persons, establish tariffs for services;
7.9. organize the meetings of the Competition Council and inform about them the members of the Competition Council and other interested parties.

8. The State Price and Competition office shall be obliged to ensure security of economic entities and commercial secrets. Officials are responsible for that according to the order established by the laws of the Republic of Lithuania.

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IV. Organization of work of the State Price and Competition Office

9. The State Price and Competition office shall be run by Director, which shall be appointed or relieved of his post by the Prime Minister of the Republic of Lithuania.

The Director of the State Price and Competition office shall have deputy directors, which are appointed or relieved of their posts upon the proposal of the Prime Minister of the Republic of Lithuania.

10. The Director of the State Price and Competition office shall:
10.1. be personally responsible for realizing the commissioned objectives;
10.2. confirm the structure and staff of the office, fix the salaries not exceeding the wage fund settled by the Government of the Republic of Lithuania;
10.3. approve the regulations (bylaws) of the subdivisions of the office;
10.4. accept for a job and dismiss heads of the subdivisions and employees of the office;
10.5. impose disciplinary punishments or inducements for the employees of the office;
10.6. exercise other powers provided for by the laws.

11. The functions of the Director shall be performed by one of the deputy directors in case the Director is absent.

12. The State Price and Competition office, taking into account the existing laws of the Republic of Lithuania, decrees and directives of the Government of the Republic of Lithuania and upon execution of them shall issue decrees, instructions and other acts as well as organize and control their enforcement. If necessary, the State Price and Competition office in cooperation with other ministries, departments and state institutions shall issue common standard acts. All the standard acts of the State Price and Competition office adopted by the Competition Council shall be compulsory to the ministries, departments, state institutions, government bodies of municipalities and economic entities.

3.3. approvement of the list of goods markets and dominant enterprises;
3.4. upon adoption of decisions the Competition Council shall observe the following principles:
3.4.1. defence of the interests of the concumers and economy of Lithuania;
3.4.2. prohibition from abusing a dominant position;
3.4.3. prohibition of agreements (coordinated activities) which restrict or impede competition;
3.4.4. prohibition of bodies of state authority and Government from restricting competition;
3.4.5. prohibition from unfair competition activities;
3.4.6. protection of competition upon concentration of market structures.

III. Rights of the Competition Council

4. The Competition Council after having analysed the material provided by the State Price and Competition office shall be entitled to:
4.1. adopt the decisions on the violations of the Law on Competition, which are as follows:
4.1.1. abuse of a dominant position;
4.1.2. agreements (coordinated activities) between economic entities which restrict or impede competition;
4.1.3. restriction of competition by bodies of state authority and government;
4.1.4. unfair competition;
4.1.5. concentration of market structures;
4.2. after having determined the violations of the Law on Competition, which have been commited by the officials of the state government institutions and economic entities, apply the following sanctions:
4.2.1. impose fines comprising up to 10 per sent of the total annual gross income on economic subjects for infringements provided for in paragraphs 7.1.1, 7.1.2, 7.1.4 and 7.1.5, non observance of the agreement concerning the termination of illegal activities, intentional failure or untimely compliance with obligations and instructions;

4.2.2. impose fines amounting up to 3 per sent of the annual gross income on economic entities for submission of misleading information;

4.2.3. impose fines equaling up to 3 months average earnings on officers of bodies of state government and economic entities for the intentional failure or untimely compliance with the directions issued by the State Price and Competition office pursuant to the Law on Competition, or for submission of misleading information;

4.2.4. obligate economic entities to terminate agreements and practices which violate the Law on Competition;

4.2.5. obligate to lower the prices if they have increased as a concequence of practices prohibited in this Law;

4.2.6. obligate to terminate the illegal use of a company name, trade mark, product marking or innacurate indication of a product's origin, or to detain goods are to those infringements;

4.2.7. apply to either the Government of Lithuania or the Court to terminate illegal practices of managing bodies or to repeal the adopted decisions.

5. The Competition Council shall hold conferences, symposiums and seminars on issues concerning the supervision of the Law on Competition and competition policy, in which representatives from government institutions shall participate.

6. Within its powers, the Competition Council shall grant the right to the State Price and Competition office to analyse some issues concerning competition and adopt decisions.

IV. Organization of work of the Competition Council

7. The Competition Council shall consist of 7 members, who shall be appointed by the Government for a term of 3 years. At least 4 of the members shall be appointed taking into account the recomendations of consumer, scientific, business and industrial organizations, one shall be assigned from the

Department of State Control, and the others, on the proposal of the office, from the State Price and Competition office.

8. The Competition Council shall be headed by the Chairman, if he is absent - by the deputy chairman. The deputy chairman shall be elected by the Competition Council by majority vote, if the meeting is attended by no less than 5 members.

9. The Chairman of the Competition Council shall be appointed by Prime Minister of the Republic of Lithuania.

10. The Competition Council shall adopt the decisions related to the application of the Law by a 2/3 majority vote of the members present at the meeting, if it is attended by no less than 5 members of the Council. The decisions shall be adopted by a nominal vote. Under equal number of votes, the decision shall be adopted by the chairman of the Competition Council.

11. Means for the remuneration of the work of the members of the Competition Council shall be included into the maintenance assignments of the State Price and Competition office.

12. The meetings of the State Price and Competition office shall be held, if necessary, on the iniciative of the State Price and Competition office but not less than once a month.

13. All the interested parties shall have the right to attend the meetings of the Competition Council. In case of need the Competition Council may decide to hold a closed meeting.

14. The State Price and Competition office shall announce about the meeting the Competition Council and the issues to be discussed to the members of the Competition Council and interested parties not later than within 5 days.

15. The material of the Competition Council shall be drawn up by the protocol, which shall be signed by the Chairman of the Competition Council and the secretary of the meeting.

16. The Competition Council shall interpret the Law on Competition of the Republic of Lithuania and adopt decisions, which shall be presented as decrees. The interpretations and decrees of the Competition Council shall be obligatory to economic entities, governments institutions and officers.

17. Decisions of the State Price and Competition office and their motives shall be publicly announced.

18. Economic entities, managing bodies and officers may, within one month of the date the decision of the State Price and Competition office is received, apply to the court to revoke or alter the said decision and recover losses.

Appeals to the court shall not suspend compliance with directions and decisions oę the State Price and Competition office, unless the court stipulates otherwise.

Supreme Council of the Republic of Lithuania

RESOLUTION

on the Entry into Force of the Law on Competition

The Supreme Council of the Republic of Lithuania resolves:

1. To establish that the Law on Competition shall enter into force on November 1, 1992.

2. To commission the Government of the Republic of to prepare, prior to the enforcement of this Law, the executive acts required for its implementation and to approve the regulations of both the Competition Council and the Price and Competition Institution.

3. The commission the Ministry of Justice of the Republic of Lithuania to prepare a draft of amendments of the Code of Violations of Administrative Law which are connected with the enforcement of the Law on Competition.

4. To grant the Competition Council and the Price and Competition Institution the right to interpret the application of the Law on Competition.

Vytautas Landsbergis
President
Supreme Counsil
Republic of Lithuania
Vilnius,
15 September 1992
No. 1 - 2879

Law on Competition

Chapter 1

General provisions

Article 1. Objectives

1. This Law shall regulate the relations which arise from activities of economic entities, officials representing them, and bodies of State authority or government which restrict competition or compete unfairly in the commodity markets of the Republic of Lithuania, as shall also define the responsibility for these activities if they violate the interests of the consumers or the economy.

The Law shall apply to the regulation of the relations throughout the territory of the Republic of Lithuania which result from competition - restricting activities or unfair competition, which the exception of relations regulated by other laws.

Article 2. Basic Definitions

Definitions of concepts used in this Law:

'Economic entities' - legal and natural persons engaged in commercial-economic activity, regardless of its character, the form of property and the type of enterprise.

'Goods' - the result of activity, i. e. production and service meant for realization.

'Market' - the aggregate of certain goods involved in purchase-sales processes on the territory and parts of the Republic whose qualities, used and price are compared in such a way that producers and consumers can substitute one for the other in the process of manufacturing and consumption.

'Competition' - emulation during which economic entities, by acting independently in the market, restrict one another's abilities to attain a dominant position in the market, and promote the production and increase the effectiveness of goods necessary to consumers.

'Dominant position' - the position of an economic entity in the market which allows for the possibility to unilaterally and decisively influence that market. The economic entity cannot be considered to have a dominant position if its market share of certain goods is no more than 40 per cent.

'Market concentration' - the merger of two or more economic entities or the acquisition by one economic entity of the right to have either all or part of the total capital of another economic entity at its disposal, as well as the conclusion of contracts which have influence over the managing decisions made by one of the economic entities, due to which a dominant position in the market is attained and competition is restricted.

Chapter 2

Activities which Restrict Competition

Article 3. Prohibition of Abusing the Dominant Position

1. Activities of economic entities having a dominant position in the market which restrict or may restrict competition by infringing economic interests shall be prohibited.

2. Economic entities shall be prohibited from engaging in the following activities which restrict competition:
1) creating hindrances for competing economic entities to enter the market or to develop the activities of already existing ones;
2) abusing a dominant position by excluding the competing economic entities from the market;
3) restraining production, decreasing the amount volumes of sales and purchase of goods, or suspending trade with the intention to create a shortage in the market or to influence prices, and consequently harming the consumers;
4) anticipating discriminating economic conditions in contracts of an identical nature with different partners; and
5) establishing fixed selling prices to the third persons in contracts with suppliers or purchasers.

Article 4. Prohibition of Agreements (Coordinated Activities) between Economic Entities which Restrict or Impede Competition

Agreements or coordinated activities between the competing economic entities (or potential competitors) shall be prohibited if they restrict or impede competition. Considered as such shall be agreements and coordinated activities concerning:
1) prices (including those established by auctions or tenders), discounts, markups and other payments;
2) volume of production;
3) division of the market according to territorial principle, volume of sales and purchases, types of goods, groups of purchasers and sellers, or otherwise;

4) restriction of other economic entities from being ousted from or entering into the market (or part of it); and
5) refusal of conclude a contract with certain sellers or purchasers.

Article 5. Exceptions to Prohibited Activities

The activities enumerated in Articles 3 and 4 of this Law may be considered to be agreement with the Law if it is proved that they result in:
1) steady reduction of consumer prices; or
2) improvement of the quality of goods.

Article 6. Prohibition of Bodies of State Authority and Government from Restricting Competition

1. Bodies of state authority and government shall be prohibited from adopting standard acts or carrying out activities which restrict the independence of economic entities or the conclusion of economic contracts, which impede the foundation, reorganization or restructuring of existing economic entities, or which grant privileges to or discriminate separate economic entities, or which otherwise restrict competition.

2. Heads of bodies of state authority and government shall be prohibited from taking up commercial - economic activities, owning personal enterprises, or holding position in managing bodies of economic entities.

Chapter 3

Unfair Competition

Article 7. Prohibition of Activities of Unfair Competition

Economic entities shall be prohibited from carrying out the following activities of unfair competition:
1) the propagation of misleading, inaccurate and distorted information (including advertisement) which may cause another economic entity or its reputation to suffer;
2) the misleading of consumers through false information regarding the quality of goods, the characteristics of utilization, the place and manner of production, and the amount and price of sale;
3) the willful use of the name, product name, trade-mark, marking, or form of product packaging or appearance of another economic entity; and
4) the acquisition, use and publishing without consent of information conserning the industrial and commercial acti-

vities and scientific - technical investigations and results of an economic entity.

CHAPTER 4
Control of Activities which are Unfair or which Restrict Competition

Article 8. The Institution of Price and Competition Control

The functions of supervision of observance of this Law as well as the Law on Prices within the Republic of Lithuania shall be executed by the Institution of Price and Competition, the director of which shall be appointed by the Government.

The Competition Council shall be formed to adopt decisions related to issues of prices and competition within the scope of this Law. The Competition Council shall consist of 7 members who shall be appointed by the Government for a term of 3 years. At least 4 of the members shall be appointed taking into account the recommendations of consumer, scientific, business and industrial organizations, and the others shall be assigned from the Institution of Price and Competition. The Competition Council shall adopt the decisions related to the application of the Law by a 2/3 majority vote. The regulations of both the Competition Council and the Institution of Price and Competition shall be approved by the Government.

With the aim of protecting the economy and consumer rights, the Institution of Price and Competition shall observe the situation in the market and fluctuations of market prices, shall accumulate information concerning possibilities for meeting consumer needs, shall periodically provide recommendations to the Government on the formation of price policies, and shall perform other functions established in its regulations.

The Institution of Price and Competition shall have the right to obtain information from both economic entities and managing bodies as well as explanations - oral or written - which are necessary to carry out the functions established in this Law and in the regulations of the Institution.

Article 9. Powers of the Institution of Price and Competition

The Institution of Price and Competition, upon establishing that economic entities or managing bodies have violated this Law, shall compile material concerning the issue and present it to the Competition Council for the adoption of a decision. On the basis of the Competition Council's decision, the Institution of Price and Competition may seek the termination of illegal practices through negotiations with the economic entity, if they have resulted minor negative changes (decrease in efficiency of production and distribution of goods, restriction of free trade) and provided that circumstances do not object to negotiation. Upon reaching an agreement, its results and terms for the termination of illegal practices shall be concluded in writing.

In other cases or if an agreement is not reached through negotiation, the Institution of Price and Competition has the right to:
1) obligate economic entities to terminate agreements and practices which violate the Law;
2) adopt a decision to lower the prices if they have increased as a consequence of practices prohibited in this Law;
3) obligate that illegal use of a company name, trade mark, product marking or inaccurate indication of a product's origin be terminated, and may detain goods due to those infringements; and
4) apply to either the Government of Lithuania or the court to terminate illegal practices of managing bodies or to repeal the adopted decisions.

CHAPTER 5

Protection of Competition in the Process of Concentration of Market Structures

Article 10. Control of the Concentration of Market Structures

If by virtue of agreement or acquisition of a controlling interest the maximum concentration of market structures (concentration of capital), which is established by the Competition Council, is exceeded, the party or parties involved in the concentration must notify the Institution of Price and Competition before undertaking any steps which may alter permanent market structure and degree of its concentration.

The Institution of Price and Competition, upon receiving notification from the interested economic entities about a planned concentration of market structures, must adopt a decision concerning the granting of permission within one month.

Upon an agreement between the parties, the deadline for the adoption of the decision may be extended, but for no longer than 9 months.

If within the indicated periods of time the Institution of Price and Competition does not take a decision, the economic entities shall acquire the right to carry out the planned concentration of market structures.

Article 11. Permitted and Prohibited Concentrations of Market Structures

Upon the execution of a concentration of market structures which has not announced in advance and for which permission of the Institution of Price and Competition was not granted, economic sanctions prescribed by Article 12 of this Law shall be applied.

Permission to concentrate market structures which has not been approved by the Institution of Price and Competition may be granted by the written decision of the Government of the Republic of Lithuania. Such permission may be granted if the parties involved in the concentration provide substantiation proving that this action will result in the increase of economic efficiency of production or competitiveness of goods, which cannot be achieved in any ways other than by the suggested concentration of market structures.

CHAPTER 6
Responsibility for Violations of the Law

Article 12. Consequences of Violating the Law

Decisions of the bodies of State government regarding violation of the Law may be appealed to the court.

Economic entities, having violated this Law, must:
1) execute the institutions of the Institution of Price and Competition to discontinue the activities, restore the previous situation, terminate or alter the agreement, and fulfill other obligations;
2) recover the losses incurred by a partner; and
3) fulfill the sanctions imposed by the Competition Council as provided by this Law.

The Competition Council have the right to:
1) impose fines comprising up to 10 per cent of the total annual gross income on economic entities for infringement of Articles 3, 4, 7, 10 and 11 of this Law, nonobservance of the agreement concerning the termination of illegal practices, or intentional failure or untimely compliance with obligations and instructions;

2) impose fines amounting up to 3 per cent of the annual gross income on economic entities for submission of misleading information; and

3) impose fines equaling up to 3 months average earnings on officers of bodies of State government and economic entities for the intentional failure or untimely compliance with the directions issued by the Institution of Price and Competition as prescribed by this Law, or for submission of misleading information.

Article 13. Exaction of Fines

Fines shall be transferred to the State budget within one month of the date that the economic entity or officer receives the decision of the Institution of Price and Competition to impose a fine.

A fine shall be exacted from the income of an economic entity without suit.

Article 14. Appeal against Decisions of the Institution of Price and Competition

Economic entities, managing bodies and officers may, within one month of the date the decision of the Institution of Price and Competition is received, apply to the court to revoke or alter the said decision and recover losses.

Appeals to the court shall not suspend compliance with directions and decisions of the Institution of Price and Competition unless the court stipulates otherwise.

Decisions of the Institution of Price and Competition and their motives shall be publicly announced.

Article 15. Procedure of Recovering Losses

Losses incurred by economic entities or consumers due to violation of this Law must be compensated for in the procedure established by law.

Losses incurred by economic entities due to decisions made by bodies of State authority and government or the Institution of Price and Competition which violate the requirements of this Law shall be compensated with the funds of either the respective bodies of government or the State budget, and shall later be exacted from the violators.

Losses shall be exacted by suit.

Vytautas Landsbergis
President
Supreme Counsil
Republic of Lithuania
Vilnius
15 September 1992
No. 1-2878

Annex II

MEXICO

"Ley Federal de Competencia Económica", 24 December 1992

CAPITULO I
DISPOSICIONES GENERALES

ARTICULO 1o.- La presente ley es reglamentaria del artículo 28 constitucional en materia de competencia económica, monopolios y libre concurrencia, es de observancia general en toda la República y aplicable a todas las áreas de la actividad económica.

ARTICULO 2o.- Esta ley tiene por objeto proteger el proceso de competencia y libre concurrencia, mediante la prevención y eliminación de monopolios, prácticas monopólicas y demás restricciones al funcionamiento eficiente de los mercados de bienes y servicios.

Para efectos de esta ley, se entenderá por Secretaría, la Secretaría de Comercio y Fomento Industrial, y por Comisión, la Comisión Federal de Competencia.

ARTICULO 3o.- Están sujetos a lo dispuesto por esta ley todos los agentes económicos, sea que se trate de personas físicas o morales, dependencias o entidades de la administración pública federal, estatal o municipal, asociaciones, agrupaciones de profesionistas, fideicomisos o cualquier otra forma de participación en la actividad económica.

ARTICULO 4o.- Para los efectos de esta ley, no constituyen monopolios las funciones que el estado ejerza de manera exclusiva en las áreas estratégicas a que se refiere el párrafo cuarto del artículo 28 de la Constitución Política de los Estados Unidos Mexicanos.

Sin embargo, las dependencias y organismos que tengan a su cargo las funciones a que se refiere el párrafo anterior, estarán sujetas a lo dispuesto por esta ley respecto de actos que no estén expresamente comprendidos dentro de las áreas estratégicas.

ARTICULO 5o.- No constituyen monopolios las asociaciones de trabajadores constituidas conforme a la legislación de la materia para proteger sus propios intereses.

Tampoco constituyen monopolios los privilegios que por determinado tiempo se conceden a los autores y artistas para la producción de sus obras y los que para el uso exclusivo de sus inventos, se otorgen a los inventores y perfeccionadores de alguna mejora.

ARTICULO 6o.- Tampoco constituyen monopolios las asociaciones o sociedades cooperativas que vendan directamente sus productos en el extranjero, siempre que:

I.Dichos productos sean la principal fuente de riqueza de la región en que se produzcan o no sean artículos de primera necesidad;

II.Sus ventas o distribución no se realicen además dentro del territorio nacional;

III.Su membresía sea voluntaria y se permita la libre entrada y salida de sus miembros;

IV.No otorguen o distribuyan permisos o autorizaciones cuya expedición corresponda a dependencias o entidades de la administración pública federal; y

V.Estén autorizadas en cada caso para constituirse por la legislatura correspondiente a su domicilio social.

ARTICULO 7o.- Para la imposición de precios máximos a los productos y servicios que sean necesarios para la economía nacional o el consumo popular, se estará a lo siguiente:

I.Corresponde en exclusiva al Ejecutivo Federal determinar mediante decreto cuáles bienes y servicios podrán sujetarse a precios máximos; y

II.La Secretaría, sin perjuicio de las atribuciones que correspondan a otras dependencias, determinará, mediante acuerdo debidamente fundado y motivado los precios máximos que correspondan a los bienes y servicios determinados conforme a la fracción anterior, con base en criterios que eviten la insuficiencia en el abasto.

La Secretaría podrá concertar y coordinar con los productores o distribuidores las acciones que sean necesarias en esta materia, sin que ello se entienda violatorio de lo dispuesto por esta ley, procurando minimizar los efectos sobre la competencia y la libre concurrencia.

La Procuraduría Federal del Consumidor, bajo la coordinación de la Secretaría de Comercio y Fomento Industrial, será responsable de la inspección, vigilancia y sanción, respecto de los precios máximos que se determinen conforme a este artículo, de acuerdo con lo que dispone la Ley Federal de Protección al Consumidor.

CAPITULO II
DE LOS MONOPOLIOS
Y LAS PRÁCTICAS MONOPOLICAS

ARTICULO 8o.- Quedan prohibidos los monopolios y estancos, así como las prácticas que, en los términos de esta ley, disminuyan, dañen o impidan la competencia y la libre concurrencia en la producción, procesamiento, distribución y comercialización de bienes o servicios.

ARTICULO 9o.- Son prácticas monopólicas absolutas los contratos, convenios, arreglos o combinaciones entre agentes económicos competidores entre sí, cuyo objeto o efecto sea cualquiera de los siguientes:

I.Fijar, elevar, concertar o manipular el precio de venta o compra de bienes o servicios al que son ofrecidos o demandados en los mercados, o intercambiar información con el mismo objeto o efecto;

II.Establecer la obligación de no producir, procesar, distribuir o comercializar sino solamente una cantidad restringida o limitada de bienes o la prestación de un número, volumen o frecuencia restringidos o limitados de servicios;

III.Dividir, distribuir, asignar o imponer porciones o segmentos de un mercado actual o potencial de bienes y servicios, mediante clientela, proveedores, tiempos o espacios determinados o determinables; o

IV.Establecer, concertar o coordinar posturas o la abstención en las licitaciones, concursos, subastas o almonedas públicas.

Los actos a que se refiere este artículo no producirán efectos jurídicos y los agentes económicos que incurran en ellos se harán acreedores a las sanciones establecidas en esta ley, sin perjuicio de la responsabilidad penal que pudiere resultar.

ARTICULO 10.- Sujeto a que se comprueben los supuestos a que se refieren los artículos 11, 12 y 13 de esta ley, se consideran prácticas monopólicas relativas los actos, contratos, convenios o combinaciones cuyo objeto o efecto sea o pueda ser desplazar indebidamente a otros agentes del mercado, impedirles sustancialmente su acceso o establecer ventajas exclusivas en favor de una o varias personas, en los siguientes casos:

I.Entre agentes económicos que no sean competidores entre si, la fijación, imposición o establecimiento de la distribución exclusiva de bienes o servicios, por razón de sujeto, situación geográfica o por periodos de tiempo determinados, incluidas la división, distribución o asignación de clientes o proveedores; así como la imposición de la obligación de no fabricar o distribuir bienes o prestar servicios por un tiempo determinado o determinable;

II.La imposición del precio o demás condiciones que un distribuidor o proveedor debe observar al expender o distribuir bienes o prestar servicios;

III.La venta o transacción condicionada a comprar, adquirir, vender o proporcionar otro bien o servicio adicional, normalmente distinto o distinguible, o sobre bases de reciprocidad;

IV. La venta o transacción sujeta a la condición de no usar o adquirir, vender o proporcionar los bienes o servicios producidos, procesados, distribuidos o comercializados por un tercero;

V.La acción unilateral consistente en rehusarse a vender o proporcionar a personas determinadas bienes o servicios disponibles y normalmente ofrecidos a terceros;

VI.La concertación entre varios agentes económicos o la invitación a éstos, para ejercer presión contra algún cliente o proveedor, con el propósito de disuadirlo de una determinada conducta, aplicar represalias u obligarlo a actuar en un sentido determinado; o

VII.En general, todo acto que indebidamente dañe o impida el proceso de competencia y libre concurrencia en la producción, procesamiento, distribución y comercialización de bienes o servicios.

ARTICULO 11.- Para que las prácticas a que se refiere el artículo anterior se consideren violatorias de esta ley, deberá comprobarse:

I.Que el presunto responsable tiene poder sustancial sobre el mercado relevante; y

II.Que se realicen respecto de bienes o servicios que correspondan al mercado relevante de que se trate.

ARTICULO 12.- Para la determinación del mercado relevante, deberán considerarse los siguientes criterios:

I.Las posibilidades de sustituir el bien o servicio de que se trate por otros, tanto de origen nacional como extranjero, considerando las posibilidades tecnológicas, en qué medida los consumidores cuentan con sustitutos y el tiempo requerido para tal sustitución;

II.Los costos de distribución del bien mismo; de sus insumos relevantes; de sus complementos y de sustitutos desde otras regiones y del extranjero, teniendo en cuenta fletes, seguros, aranceles y restricciones no arancelarias, las restricciones impuestas por los agentes económicos o por sus asociaciones y el tiempo requerido para abastecer el mercado desde esas regiones;

III.Los costos y las probabilidades que tienen los usuarios o consumidores para acudir a otros mercados; y

IV.Las restricciones normativas de carácter federal, local o internacional que limiten el acceso de usuarios o consumidores a fuentes de abasto alternativas, o el acceso de los proveedores a clientes alternativos.

ARTICULO 13.- Para determinar si un agente económico tiene poder sustancial en el mercado relevante, deberá considerarse:

I.Su participación en dicho mercado y si puede fijar precios unilateralmente o restringir el abasto en el mercado relevante sin que los agentes competidores puedan, actual o potencialmente, contrarrestar dicho poder;

II.La existencia de barreras a la entrada y los elementos que previsiblemente puedan alterar tanto dichas barreras como la oferta de otros competidores;

III.La existencia y poder de sus competidores;

IV.Las posibilidades de acceso del agente económico y sus competidores a fuentes de insumos;

V.Su comportamiento reciente; y

VI.Los demás criterios que se establezcan en el reglamento de esta ley.

ARTICULO 14.- En los términos de la fracción V del artículo 117 de la Constitución Política de los Estados Unidos Mexicanos, no producirán efectos jurídicos los actos de autoridades estatales cuyo objeto directo o indirecto sea prohibir la entrada a su territorio o la salida de mercancías o servicios de origen nacional o extranjero.

ARTICULO 15.- La Comisión podrá investigar de oficio o a petición de parte si se está en presencia de los actos a que se refiere el artículo anterior y, en su caso, declarar su existencia. La declaratoria será publicada en el Diario Oficial de la Federación y podrá ser impugnada por la autoridad estatal ante la Suprema Corte de Justicia de la Nación.

CAPITULO III
DE LAS CONCENTRACIONES

ARTICULO 16.- Para los efectos de esta ley, se entiende por concentración la fusión, adquisición del control o cualquier acto por virtud del cual se concentren sociedades, asociaciones, acciones, partes sociales, fideicomisos o activos en general que se realice entre competidores, proveedores, clientes o cualesquiera otros agentes económicos. La Comisión impugnará y sancionará aquellas concentraciones cuyo objeto o efecto sea disminuir, dañar o impedir la competencia y la libre concurrencia respecto de bienes o servicios iguales, similares o sustancialmente relacionados.

ARTICULO 17.- En la investigación de concentraciones, la Comisión habrá de considerar como indicios de los supuestos a que se refiere el artículo anterior, que el acto o tentativa:

I.Confiera o pueda conferir al fusionante, al adquirente o agente económico resultante de la concentración, el poder de fijar precios unilateralmente o restringir sustancialmente el abasto o suministro en el mercado relevante, sin que los agentes competidores puedan, actual o potencialmente, contrarrestar dicho poder;

II.Tenga o pueda tener por objeto indebidamente desplazar a otros agentes económicos, o impedirles el acceso al mercado relevante; y

III.Tenga por objeto o efecto facilitar sustancialmente a los participantes en dicho acto o tentativa el ejercicio de las prácticas monopólicas a que se refiere el capítulo segundo de esta ley.

ARTICULO 18.- Para determinar si la concentración debe ser impugnada o sancionada en los términos de esta ley, la Comisión deberá considerar los siguientes elementos:

I.El mercado relevante, en los términos prescritos en el artículo 12 de esta ley;

II.La identificación de los agentes económicos que abastecen el mercado de que se trate, el análisis de su poder en el mercado relevante, de acuerdo con el artículo 13 de esta ley, y el grado de concentración en dicho mercado; y

III.Los demás criterios e instrumentos analíticos que prescriba el reglamento de esta ley.

ARTICULO 19.- Si de la investigación y desahogo del procedimiento establecido por esta ley resultara que la concentración configura un acto de los previstos por este capítulo, la Comisión, además de aplicar las medidas de apremio o sanciones que correspondan podrá:

I.Sujetar la realización de dicho acto al cumplimiento de las condiciones que fije la Comisión; o

II.Ordenar la desconcentración parcial o total de lo que se hubiera concentrado indebidamente, la terminación del control o la supresión de los actos, según corresponda.

ARTICULO 20.- Las siguientes concentraciones, antes de realizarse, deberán ser notificadas a la Comisión:

I.Si la transacción importa, en un acto o sucesión de actos, un monto superior al equivalente a 12 millones de veces el salario mínimo general vigente para el Distrito Federal;

II.Si la transacción implica, en un acto o sucesión de actos, la acumulación del 35 por ciento o más de los activos o acciones de un agente económico cuyos activos o ventas importen más del equivalente a 12 millones de veces el salario mínimo general vigente para el Distrito Federal; o

III.Si en la transacción participan, dos o más agentes económicos cuyos activos o volumen anual de ventas, conjunta o separadamente, sumen más de 48 millones de veces el salario mínimo general vigente para el Distrito Federal, y dicha transacción implique una acumulación adicional de activos o capital social superior al equivalente a cuatro millones ochocientos mil veces el salario mínimo general vigente para el Distrito Federal.

Para la inscripción de los actos que conforme a su naturaleza deban ser inscritos en el Registro Público de Comercio, los agentes económicos que estén en los supuestos I a III deberán acreditar haber obtenido resolución favorable de la Comisión o haber realizado la notificación a que se refiere este artículo sin que dicha Comisión hubiere emitido resolución en el plazo a que se refiere el siguiente artículo.

ARTICULO 21.- Para los efectos del artículo anterior, se estará a lo siguiente:

I.La notificación se hará por escrito, acompañada del proyecto del acto jurídico de que se trate, que incluya los nombres o denominaciones sociales de los agentes económicos involucrados, sus estados financieros del último ejercicio, su participación en el mercado y los demás datos que permitan conocer la transacción pretendida;

II.La Comisión podrá solicitar datos o documentos adicionales dentro de los veinte días naturales contados a partir de la recepción de la notificación, mismos que los interesados deberán proporcionar dentro de un plazo de quince días naturales, el que podrá ser ampliado en casos debidamente justificados;

III.Para emitir su resolución, la Comisión tendrá un plazo de cuarenta y cinco días naturales contado a partir de la recepción de la notificación o, en su caso, de la documentación adicional solicitada. Concluido el plazo sin emitir resolución, se entenderá que la Comisión no tiene objeción alguna;

IV.En casos excepcionalmente complejos, el Presidente de la Comisión, bajo su responsabilidad, podrá ampliar el plazo a que se refieren las fracciones II y III hasta por sesenta días naturales adicionales;

V.La resolución de la Comisión deberá estar debidamente fundada y motivada; y

VI.La resolución favorable no prejuzgará sobre la realización de otras prácticas monopólicas prohibidas por esta ley, por lo que no releva de otras responsabilidades a los agentes económicos involucrados.

ARTICULO 22.- No podrán ser impugnadas con base en esta ley:

I.Las concentraciones que hayan obtenido resolución favorable, excepto cuando dicha resolución se haya obtenido con base en información falsa; y

II.En tratándose de concentraciones que no requieran ser previamente notificadas, después de un año de haberse realizado.

CAPITULO IV
DE LA COMISIÓN FEDERAL DE COMPETENCIA

ARTICULO 23.- La Comisión Federal de Competencia es un órgano administrativo desconcentrado de la Secretaría de Comercio y Fomento Industrial, contará con autonomía técnica y operativa y tendrá a su cargo prevenir, investigar y combatir los monopolios, las prácticas monopólicas y las concentraciones, en los términos de esta ley, y gozará de autonomía para dictar sus resoluciones.

ARTICULO 24.- La Comisión tendrá las siguientes atribuciones:

I.Investigar la existencia de monopolios, estancos, prácticas o concentraciones prohibidas por esta ley, para lo cual podrá requerir de los particulares y demás agentes económicos la información o documentos relevantes;

II.Establecer los mecanismos de coordinación para el combate y prevención de monopolios, estancos, concentraciones y prácticas ilícitas;

III.Resolver los casos de su competencia y sancionar administrativamente la violación de esta ley y denunciar ante el Ministerio Público las conductas delictivas en materia de competencia y libre concurrencia;

IV. Opinar sobre los ajustes a los programas y políticas de la administración pública federal, cuando de éstos resulten efectos que puedan ser contrarios a la competencia y la libre concurrencia;

V.Opinar, cuando se lo solicite el Ejecutivo Federal, sobre las adecuaciones a los proyectos de leyes y reglamentos, por lo que conciernen a los aspectos de competencia y libre concurrencia;

VI.Cuando lo considere pertinente, emitir opinión en materia de competencia y libre concurrencia, respecto de leyes, reglamentos, acuerdos, circulares y actos administrativos, sin que tales opiniones tengan efectos jurídicos ni la Comisión pueda ser obligada a emitir opinión;

VII.Elaborar y hacer que se cumplan, hacia el interior de la Comisión, los manuales de organización y de procedimientos;

VIII.Participar con las dependencias competentes en la celebración de tratados, acuerdos o convenios internacionales en materia de regulación o políticas de competencia y libre concurrencia, de los que México sea o pretenda ser parte; y

IX.Las demás que le confieran ésta y otras leyes y reglamentos.

ARTICULO 25.- La Comisión estará integrada por cinco comisionados, incluyendo al Presidente de la misma. Deliberará en forma colegiada y decidirá los casos por mayoría de votos, teniendo su Presidente voto de calidad.

La Comisión tendrá el personal necesario para el despacho eficaz de sus asuntos, de acuerdo con su presupuesto autorizado.

ARTICULO 26.- Los comisionados serán designados por el titular del Ejecutivo Federal y deberán cumplir los siguientes requisitos:

I.Ser ciudadanos mexicanos, profesionales en materias afines al objeto de esta ley, mayores de treinta y cinco años de edad y menores de setenta y cinco;

II.Haberse desempeñado en forma destacada en cuestiones profesionales, de servicio público o académicas sustancialmente relacionadas con el objeto de esta ley.

Los comisionados deberán abstenerse de desempeñar cualquier otro empleo, trabajo o comisión pública o privada, con excepción de los cargos docentes. Asimismo, estarán impedidos para conocer de asuntos en que tengan interés directo o indirecto, en los términos del reglamento.

ARTICULO 27.- Los comisionados serán designados para desempeñar sus puestos por periodos de diez años, renovables, y sólo podrán ser removidos de sus cargos por causa grave, debidamente justificada.

ARTICULO 28.- El Presidente de la Comisión será designado por el Titular del Ejecutivo Federal y tendrá las siguientes facultades:

I.Coordinar los trabajos de la Comisión;

II.Instrumentar, ejecutar y vigilar la aplicación de las políticas internas que se establezcan en la materia;

III.Expedir y publicar un informe anual sobre el desempeño de las funciones de la Comisión, que incluya los resultados de sus acciones en materia de competencia y libre concurrencia;

IV.Solicitar a cualquier autoridad del país o del extranjero la información que requiera para indagar sobre posibles violaciones a esta ley;

V.Actuar como representante de la Comisión; nombrar y remover al personal; crear las unidades técnicas necesarias de conformidad con su presupuesto, así como delegar facultades; y

VI.Las demás que le confieran las leyes y reglamentos.

ARTICULO 29.- La Comisión contará con un Secretario Ejecutivo designado por el Presidente de la propia Comisión, quien tendrá a su cargo la coordinación operativa y administrativa. El Secretario Ejecutivo dará fé de los actos en que intervenga.

CAPITULO V
DEL PROCEDIMIENTO

ARTICULO 30.- El procedimiento ante la Comisión se inicia de oficio o a petición de parte.

ARTICULO 31.- La Comisión, en ejercicio de sus atribuciones, podrá requerir los informes o documentos relevantes para realizar sus investigaciones, así como citar a declarar a quienes tengan relación con los casos de que se trate.

La información y documentos que haya obtenido directamente la Comisión en la realización de sus investigaciones, así como los que se le proporcionen, son estrictamente confidenciales. Los servidores públicos estarán sujetos a responsabilidad en los casos de divulgación de dicha información, excepto cuando medie orden de autoridad competente.

ARTICULO 32.- Cualquier persona en el caso de las prácticas monopólicas absolutas, o el afectado en el caso de las demás prácticas o concentraciones prohibidas por esta ley, podrá denunciar por escrito ante la Comisión al presunto responsable, indicando en qué consiste dicha práctica o concentración.

En el caso de prácticas monopólicas relativas o concentraciones, el denunciante deberá incluir los elementos que configuran las prácticas o concentraciones y, en su caso, los conceptos que demuestren que el denunciante ha sufrido o puede sufrir un daño o perjuicio sustancial.

La Comisión podrá desechar las denuncias que sean notoriamente improcedentes.

ARTICULO 33.- El procedimiento ante la Comisión se tramitará conforme a las siguientes bases:

I.Se emplazará al presunto responsable, informándole en qué consiste la investigación, acompañando, en su caso, copia de la denuncia;

II.El emplazado contará con un plazo de treinta días naturales para manifestar lo que a su derecho convenga y adjuntar las pruebas documentales que obren en su poder y ofrecer las pruebas que ameriten desahogo;

III.Una vez desahogadas las pruebas, la Comisión fijará un plazo no mayor a treinta días naturales para que se formulen los alegatos verbalmente o por escrito; y

IV.Una vez integrado el expediente, la Comisión deberá dictar resolución en un plazo que no excederá de 60 días naturales.

En lo no previsto, se estará a lo dispuesto en el reglamento de esta ley.

ARTICULO 34.- Para el eficaz desempeño de sus atribuciones, la comisión podrá emplear los siguientes medios de apremio:

I.Apercibimiento; o

II.Multa hasta por el importe del equivalente a 1,500 veces el salario mínimo vigente para el Distrito Federal, cantidad que podrá aplicarse por cada día que transcurra sin cumplimentarse lo ordenado por la Comisión.

CAPITULO VI
DE LAS SANCIONES

ARTICULO 35.- La Comisión pondrá aplicar las siguientes sanciones:

I.Ordenar la suspensión, corrección o supresión de la práctica o concentración de que se trate;

II.Ordenar la desconcentración parcial o total de lo que se haya concentrado indebidamente, sin perjuicio de la multa que en su caso proceda;

III.Multa hasta por el equivalente a siete mil quinientas veces el salario mínimo general vigente para el Distrito Federal por haber declarado falsamente o entregar información falsa a la Comisión, con independencia de la responsabilidad penal en que se incurra;

IV.Multa hasta por el equivalente a 375 mil veces el salario mínimo general vigente para el Distrito Federal, por haber incurrido en alguna práctica monopólica absoluta;

V.Multa hasta por el equivalente a 225 mil veces el salario mínimo general vigente para el Distrito Federal, por haber incurrido en alguna práctica monopólica relativa y hasta por el equivalente a 100 mil veces el salario mínimo general vigente para el Distrito Federal, en el caso de lo dispuesto por la fracción VII del artículo 10 de esta ley;

VI.Multa hasta por el equivalente a 225 mil veces el salario mínimo general vigente para el Distrito Federal, por haber incurrido en alguna concentración de las prohibidas por esta ley; y hasta por el equivalente a 100 mil veces el salario mínimo general vigente para el Distrito Federal por no haber notificado la concentración cuando legalmente deba hacerse; y

VII.Multa hasta por el equivalente a siete mil quinientas veces el salario mínimo general vigente para el Distrito Federal, a los individuos que participen directamente en prácticas monopólicas o concentraciones prohibidas, en representación o por cuenta y orden de personas morales.

En caso de reincidencia, se podrá imponer una multa adicional hasta por el doble de la que corresponda.

ARTICULO 36.- La Comisión, en la imposición de multas, deberá considerar la gravedad de la infracción, el daño causado, los indicios de intencionalidad, la participación del infractor en los mercados; el tamaño del mercado afectado; la duración de la práctica o concentración y la reincidencia o antecedentes del infractor, así como su capacidad económica.

ARTICULO 37.- En el caso de las infracciones a que se refieren las fracciones IV a VII del artículo 35 que, a juicio de la Comisión, revistan particular gravedad, ésta podrá imponer, en lugar de las multas previstas en las mismas, una multa hasta por el diez por ciento de las ventas anuales obtenidas por el infractor durante el ejercicio fiscal anterior o hasta el diez por ciento del valor de los activos del infractor, cualquiera que resulte más alta.

ARTICULO 38.- Los agentes económicos que hayan demostrado durante el procedimiento haber sufrido daños y perjuicios a causa de la práctica monopólica o concentración ilícita, podrán deducir su acción por la vía judicial, para obtener una indemnización hasta por daños y perjuicios. Al efecto, la autoridad judicial podrá considerar la estimación de los daños y perjuicios que haya realizado la propia Comisión.

No procederá acción judicial o administrativa alguna con base en esta ley, fuera de las que la misma establece.

CAPITULO VII
DEL RECURSO DE RECONSIDERACIÓN

ARTICULO 39.- Contra las resoluciones dictadas por la Comisión con fundamento en esta ley, se podrá interponer, ante la propia Comisión, recurso de reconsideración, dentro del plazo de 30 días hábiles siguientes a la fecha de la notificación de tales resoluciones.

El recurso tiene por objeto revocar, modificar o confirmar la resolución reclamada y los fallos que se dicten contendrán la fijación del acto impugnado, los fundamentos legales en que se apoye y los puntos de resolución. El reglamento de la presente ley establecerá los términos y demás requisitos para la tramitación y sustanciación del recurso.

La interposición del recurso se hará mediante escrito dirigido al Presidente de la Comisión, en el que se deberá expresar el nombre y domicilio del recurrente y los agravios, acompañándose los elementos de prueba que se consideren necesarios, así como las constancias que acrediten la personalidad del promovente.

La interposición del recurso suspenderá la ejecución de la resolución impugnada. Cuando se trate de la suspensión de las sanciones a que se refieren las fracciones I y II del artículo 35 y se pueda ocasionar daño o perjuicio a terceros, el recurso se concederá si el promovente otorga garantía bastante para reparar el daño e indemnizar los perjuicios si no obtiene resolución favorable.

La Comisión dictará resolución y la notificará en un término que no excederá de 60 días contados a partir de la fecha en que se haya interpuesto el recurso. El silencio de la Comisión significará que se ha confirmado el acto impugnado.

TRANSITORIOS

PRIMERO.- La presente ley entrará en vigor a los 180 días de su publicación en el Diario Oficial de la Federación.

SEGUNDO.- La primera designación de los cinco comisionados a que se refiere esta ley, por única vez, se hará mediante nombramientos por plazos de dos, cuatro, seis, ocho y diez años, respectivamente. Los subsecuentes se harán en los términos de esta ley.

TERCERO.- Se abrogan:

I.La Ley Orgánica del artículo 28 Constitucional en materia de Monopolios publicada en el Diario Oficial de la Federación el 31 de agosto de 1934 y sus reformas;

II.La Ley sobre Atribuciones del Ejecutivo Federal en Materia Económica, publicada en el Diario Oficial de la Federación el 30 de diciembre de 1950 y sus reformas;

III.La Ley de Industrias de Transformación, publicada en el Diario Oficial de la Federación el 13 de mayo de 1941; y

IV.La Ley de Asociaciones de Productores para la Distribución y Venta de sus Productos, publicada en el Diario Oficial de la Federación el 25 de junio de 1937.

En lo que no se opongan a la presente ley, continuarán en vigor las disposiciones expedidas con base en los ordenamientos que se abrogan, hasta en tanto no se deroguen expresamente.

Publicado en el Diario Oficial de la Federación el 24 de diciembre de 1993.

REGLAMENTO INTERIOR DE LA COMISIÓN FEDERAL DE COMPETENCIA

TITULO PRIMERO
DISPOSICIONES GENERALES

ARTICULO 1o.- El presente reglamento tiene por objeto establecer la estructura orgánica y las bases de operación de la Comisión Federal de Competencia.

ARTICULO 2o.- Para efectos del presente reglamento se entenderá por:

I.Secretaría, la Secretaría de Comercio y Fomento Industrial;

II.Ley, la Ley Federal de Competencia Económica; y

III.Comisión, la Comisión Federal de Competencia.

ARTICULO 3o.- La Comisión es un órgano administrativo desconcentrado de la Secretaría, dotado de autonomía técnica y operativa para dictar sus resoluciones, en los términos de la Ley, este reglamento y las demás disposiciones que resulten aplicables.

ARTICULO 4o.- El presupuesto de la Comisión y los lineamientos para su ejercicio se sujetarán a la normatividad que la Secretaría de Hacienda y Crédito Público establece para las unidades de gasto autónomo. El presupuesto que se autorice para la Comisión no podrá ser objeto de transferencia a otras unidades de la Secretaría.

ARTICULO 5o.- La Comisión podrá establecer mecanismos de coordinación con dependencias y entidades de la administración pública federal, de los estados, de los municipios u otros organismos, públicos o privados, para la prevención e investigación de los monopolios, estancos, concentraciones y prácticas monopólicas, y para el cumplimiento de las demás disposiciones de la Ley, este reglamento u otras disposiciones aplicables.

ARTICULO 6o.- Los servidores públicos que laboren en la Comisión estarán obligados a guardar confidencialidad respecto de la información y documentación que por razones de su trabajo manejen y que estén relacionadas con la tramitación de los procedimientos radicados ante la misma, observando estrictamente las disposiciones internas que en esta materia expida la Comisión.

ARTICULO 7o.- Los días y horas laborables de la Comisión se sujetarán al calendario anual que al efecto apruebe el Pleno de la misma, a propuesta del Presidente.

Los días en que la Comisión suspenda sus labores, o cuando sus oficinas permanezcan cerradas, serán considerados como inhábiles para todos los efectos legales, salvo en los casos de habilitación expresa para la realización o práctica de diligencias.

TITULO SEGUNDO
DE LA ORGANIZACION Y FACULTADES DE LA COMISION

CAPITULO I
De la organización de la Comisión

ARTICULO 8o.- Para el ejercicio de sus funciones y el despacho de los asuntos que le competen, la Comisión contará con los siguientes órganos:

I.El Pleno;

II.La Presidencia;

III.La Secretaría Ejecutiva;

IV.Las Direcciones Generales:

a) De Asuntos Jurídicos y Contenciosos;

b) De Estudios Económicos;

c) De Concentraciones;

d) De Investigaciones;

e) De Administración; y

V.Las demás unidades y personal técnico y administrativo que autorice el Presidente de la Comisión, de acuerdo con el presupuesto autorizado y de conformidad con lo establecido por el artículo 28, fracción V de la Ley, y sujeto a las normas y lineamientos que la Secretaría de Hacienda y Crédito Público emita en la materia.

ARTICULO 9o.- El Presidente de la Comisión será sustituido en sus ausencias temporales por el comisionado que designe, mediante acuerdo, el propio Presidente.

ARTICULO 10.- El Secretario Ejecutivo será suplido en sus ausencias temporales por el Director General que designe mediante acuerdo el Presidente.

ARTICULO 11.- Los Directores Generales serán suplidos por el Director de Area que designe mediante acuerdo el Secretario Ejecutivo.

ARTICULO 12.- Sin perjuicio de lo previsto por otras normas aplicables, en casos de ausencia temporal, accidental, excusa o impedimento, los servidores públicos de la Comisión serán suplidos conforme al acuerdo correspondiente.

ARTICULO 13.- La Comisión contará con las unidades técnicas y administrativas, así como con las delegaciones u oficinas regionales, que sean necesarias para la debida aplicación y vigilancia de las funciones y atribuciones que le corresponden, de conformidad con lo establecido en la Ley, este reglamento y las demás disposiciones aplicables.

CAPITULO II

Del Pleno de la Comisión

ARTICULO 14.- El Pleno es el órgano supremo de decisión de la Comisión y se integra por cinco comisionados incluyendo al Presidente. Bastará la presencia de tres para que pueda sesionar válidamente, pero nunca podrá sesionar sin la presencia del Presidente o del comisionado que lo supla legalmente.

Las resoluciones del Pleno se tomarán por unanimidad o mayoría de votos de los comisionados presentes, quienes no podrán abstenerse de votar, excepto cuando tengan impedimento legal. El Presidente de la Comisión presidirá las sesiones del Pleno y en caso de empate tendrá voto de calidad.

ARTICULO 15.- Las resoluciones del Pleno o los extractos de las mismas podrán ser publicados en el informe de la Comisión y en periódicos o publicaciones especializadas.

ARTICULO 16.- Las sesiones del Pleno podrán ser ordinarias o extraordinarias. Las sesiones ordinarias se celebrarán cuando menos bimestralmente. Las sesiones extraordinarias serán convocadas por el Presidente de la Comisión o por tres comisionados, cuando menos, a través del Secretario Ejecutivo. En el último caso, se deberán expresar en la convocatoria las razones para sesionar.

De las sesiones del Pleno se levantará acta, en la que se asentará una síntesis, y se transcribirán los acuerdos o resoluciones que hayan sido aprobados por el Pleno en el libro o sistema de registro que al efecto determine el Secretario Ejecutivo. El acta respectiva será sometida a la aprobación del Pleno en la sesión inmediata posterior.

ARTICULO 17.- Para la realización de las sesiones del Pleno, el Secretario Ejecutivo deberá notificar por lo menos con 36 horas de anticipación, el lugar, fecha, hora y orden del día de la misma, salvo en el caso de sesiones extraordinarias, las cuales se podrán convocar con 24 horas de anticipación. Asimismo, las sesiones serán válidas, sin necesidad de formalidades ulteriores, en el caso de que todos los comisionados estén presentes.

ARTICULO 18.- Una vez integrados los expedientes por la Secretaría Ejecutiva, se turnarán por acuerdo del Presidente al Comisionado Ponente, quien presentará su proyecto de resolución al Pleno para aprobación o modificación.

ARTICULO 19.- Los comisionados, una vez terminada la etapa de instrucción de cada caso, contarán con el apoyo técnico y de investigación a través de la Secretaría Ejecutiva para la ampliación o aclaración de los expedientes correspondientes en que proceda, sin perjuicio de que se les asigne personal técnico y administrativo, de acuerdo con el presupuesto autorizado y sujeto a las normas y lineamientos que la Secretaría de Hacienda y Crédito Público emita en la materia.

Los comisionados podrán participar en eventos de difusión, convenciones y congresos relacionados con las tareas de la Comisión.

ARTICULO 20.- Corresponde al Pleno de la Comisión:

I.Resolver los casos de su competencia, sancionar administrativamente la violación de la Ley y sus reglamentos, y acordar la presentación de denuncias o querellas ante el Ministerio Público, en su caso;

II.Interpretar para efectos administrativos en caso de duda, confusión o desacuerdo, cualquier disposición de este reglamento, así como resolver aquellas situaciones no previstas por el mismo;

III.Resolver aquellos asuntos que al efecto le presente el Presidente de la Comisión;

IV.Aprobar los mecanismos de coordinación con las dependencias y entidades de la administración pública federal, de los estados, los municipios u otros organismos, públicos o privados, para la prevención e investigación de los monopolios, estancos, concentraciones, prácticas monopólicas y, en general, para la debida aplicación de la Ley y sus reglamentos;

V.Opinar sobre los proyectos de leyes y reglamentos en lo relativo a competencia y libre concurrencia, cuando se lo solicite el Ejecutivo Federal;

VI.Aprobar los manuales de organización y de procedimientos, así como la normatividad interna de la Comisión;

VII.Conocer el informe previo sobre posibles desechamientos de denuncias notoriamente improcedentes, y aprobar o impugnar total o parcialmente dicho informe;

VIII.Resolver los recursos de reconsideración que se interpongan contra los actos de la propia Comisión;

IX.A propuesta del Presidente, aprobar el establecimiento y las sedes de las delegaciones regionales y las funciones conferidas a dichas delegaciones;

X.En su caso, designar de entre sus miembros al comisionado o comisionados visitadores de las delegaciones regionales, los cuales darán cuenta del funcionamiento de éstas a la Comisión;

XI.Conceder licencias a los comisionados cuando exista causa justificada para ello, hasta por un mes cada año, con goce de sueldo, y siempre que no se perjudique el buen funcionamiento de la Comisión; y

XII.Las demás que le señalen la Ley, este reglamento u otros ordenamientos.

CAPITULO III

Del Presidente de la Comisión

ARTICULO 21.- El Presidente representa legalmente a la Comisión en el ámbito de sus facultades, y será designado en los términos del artículo 28 de la Ley.

ARTICULO 22.- El Presidente podrá delegar, mediante acuerdo, sus facultades en los servidores públicos de la Comisión de conformidad con el acuerdo de delegación respectivo.

Se considerarán facultades indelegables del Presidente, las señaladas en la fracción III del artículo 28 de la Ley y las señaladas en las fracciones I, II, V y XI a XIII del artículo 24 de este reglamento, así como la facultad para crear las unidades técnicas necesarias de conformidad con el presupuesto de la Comisión, y de acuerdo con la normatividad o lineamientos establecidos por la Secretaría de Hacienda y Crédito Público.

ARTICULO 23.- Corresponde al Presidente de la Comisión, salvo las excepciones establecidas en la Ley, este reglamento u otras disposiciones aplicables, nombrar y remover discrecionalmente a los servidores públicos de confianza de la misma.

ARTICULO 24.- Corresponde al Presidente de la Comisión:

I.Proponer al Pleno las políticas de la Comisión y, cuando sean aprobadas, cuidar que se apliquen o ejecuten;

II.Someter a consideración del Pleno la interpretación para efectos administrativos de cualquier disposición de este reglamento, cuando exista duda, confusión o desacuerdo respecto de su alcance o sentido;

III.Admitir a trámite los casos y recursos interpuestos ante la Comisión y acordar con el Secretario Ejecutivo, en su caso, el desechamiento de los notoriamente improcedentes sin necesidad de prevención en caso alguno;

IV.Formular las bases, revisar los requisitos y suscribir los convenios y contratos que celebre la Comisión;

V.Enviar a la Secretaría, una vez autorizado por la Secretaría de Hacienda y Crédito Público, el proyecto de presupuesto de la Comisión, para que se integre al presupuesto global de esa dependencia;

VI.Emitir opinión sobre los ajustes a los programas y políticas de la administración pública federal, cuando de éstos resulten efectos que puedan ser contrarios a la competencia y libre concurrencia;

VII.Expedir órdenes de presentación de documentación o información conforme a lo dispuesto por los artículos 21 ó 31 de la Ley, así como citar a declarar a quienes tengan relación con los casos de que se trate, utilizando en su caso las medidas de apremio señaladas por la Ley;

VIII.Emitir opinión en materia de competencia y libre concurrencia, cuando lo considere pertinente, respecto de leyes, reglamentos, acuerdos, circulares, o proyectos de todos éstos, así como respecto de actos administrativos, sin que dicha opinión tenga efectos jurídicos, ni pueda ser obligado a emitirla;

IX.Ordenar la publicación de las resoluciones completas que emita el Pleno, o bien extractos de aquellas, así como de artículos o de materiales de difusión relacionados con la legislación y las políticas de competencia, en el informe que publique la Comisión. Dicho informe deberá ser anual, por lo menos, y será el órgano oficial de difusión de la Comisión;

X.Participar con las dependencias competentes en la negociación y discusión de tratados o convenios internacionales en materia de competencia económica;

XI.Asignar los asuntos a los comisionados;

XII.Emitir los lineamientos en materia de difusión, y autorizar que los comisionados, el Secretario Ejecutivo y los servidores de la Comisión participen en eventos o ponencias, cuidando la uniformidad de criterios y políticas de la Comisión, salvo en lo relativo a votos particulares;

XIII.Emitir los acuerdos de suplencia y delegación de facultades;

XIV.Proponer a la aprobación del Pleno los manuales de organización y de procedimientos de la Comisión, así como la normatividad en materia de confidencialidad y los demás ordenamientos internos que juzgue convenientes para el buen desempeño de sus funciones; y

XV.Las demás que señalen la Ley, este reglamento u otros ordenamientos.

CAPITULO IV

Del Secretario Ejecutivo

ARTICULO 25.- Corresponde al Secretario Ejecutivo:

I.Auxiliar al Presidente en la asignación y tramitación de los casos, recursos y demás asuntos interpuestos ante la Comisión;

II.Coordinar a las Direcciones Generales de la Comisión para la integración de los expedientes y su posterior envío al Presidente;

III.Representar a la Comisión en toda clase de procedimientos administrativos, contenciosos administrativos, laborales y judiciales, y suplir al Presidente de la Comisión en los juicios de amparo;

IV. Dar cuenta y levantar actas de las sesiones del Pleno y de las votaciones de los comisionados y notificar las resoluciones, así como tramitar la ejecución de éstas y de las sanciones impuestas por la Comisión;

V.Coordinar y supervisar el debido seguimiento de los procedimientos que se sigan ante la Comisión, cuidando la uniformidad de criterios y evitando duplicidad en los procedimientos que se tramiten ante la Comisión;

VI. Coordinar y supervisar la administración de la Comisión;

VII.Acordar con el Presidente de la Comisión lo relativo a las sesiones del Pleno;

VIII.Expedir órdenes de presentación de documentación o información conforme a lo dispuesto por los artículos 21 ó 31 de la Ley, así como citar a declarar a quienes tengan relación con los casos de que se trate, aplicando en su caso las medidas de apremio señaladas por la Ley;

IX.Resolver, previo acuerdo del Presidente de la Comisión, las consultas que presenten los interesados, sin que éstas tengan ningún efecto jurídico ni vinculativo;

X.Promover y coordinar las relaciones de la Comisión con las distintas dependencias y entidades de la administración pública federal, de los estados, los municipios, u otros organismos públicos o privados, nacionales o internacionales, en materia de competencia económica y libre concurrencia;

XI.Admitir a trámite los casos y recursos interpuestos ante la Comisión y acordar con el Presidente de la misma, en su caso, el desechamiento de los notoriamente improcedentes sin necesidad de prevención en caso alguno;

XII.Presentar a la aprobación del Presidente el proyecto de presupuesto de la Comisión;

XIII.Expedir copias certificadas de las constancias que obren en el archivo de la Comisión, cuando deban ser exhibidas en algún procedimiento, proceso o averiguación, o cuando se considere procedente por existir causas análogas. Asimismo, se deberán expedir copias certificadas cuando medie mandamiento escrito de autoridad competente, que funde y motive la causa legal del procedimiento;

XIV.Recibir, tramitar y turnar las denuncias o quejas que por violaciones a la Ley o al reglamento se presenten o inicien ante la Comisión;

XV.Encargarse del establecimiento, operación y control de la Oficialía de Partes de la Comisión;

XVI.Colaborar con el Presidente en la elaboración del informe anual de la Comisión, así como en los informes especiales que se requieran;

XVII.Coordinar la participación de los servidores públicos de la Comisión en reuniones, convenciones, congresos, simposios y cualquier otra reunión a nivel nacional o internacional, en materia de competencia y libre concurrencia, bajo los lineamientos e instrucciones que señale el Presidente;

XVIII.Compilar las resoluciones de la Comisión y publicarlas cuando el Presidente así se lo señale;

XIX.Formar, mantener, custodiar y acrecentar el acervo biblio-hemerográfico de la Comisión; y

XX.Las demás que señalen la Ley, este reglamento y otros ordenamientos, o que mediante acuerdo de delegación le otorgue el Presidente de la Comisión.

CAPITULO V
De las Direcciones Generales

ARTICULO 26.- Para el desempeño de sus funciones, las Direcciones Generales tendrán un Director General, Directores de Area, Subdirectores, Jefes de Departamento, Analistas y demás personal técnico y administrativo que autorice el Presidente de la Comisión, de acuerdo con el presupuesto asignado y conforme a lo establecido en el artículo 28, fracción V, de la Ley.

Las Direcciones Generales responderán directamente del desempeño de sus funciones y del ejercicio de sus atribuciones ante el Secretario Ejecutivo. Las demás unidades o áreas administrativas lo harán ante su superior inmediato.

ARTICULO 27.- Corresponde a las Direcciones Generales:

I.Planear, programar, organizar, dirigir, controlar y evaluar el desempeño de las labores encomendadas a los órganos a su cargo;

II.Acordar con el Secretario Ejecutivo la resolución de los asuntos que sean de su competencia;

III.Formular los dictámenes, opiniones e informes que les sean solicitados por el Presidente o el Secretario Ejecutivo;

IV.Proponer a la Secretaría Ejecutiva el ingreso, promociones y licencias del personal a su cargo;

V.Elaborar proyectos sobre la organización de la Dirección General a su cargo y proponerlas al Secretario Ejecutivo;

VI.Formular los proyectos de programación y presupuestación de la Dirección General a su cargo;

VII.Asesorar y apoyar a los comisionados en los asuntos que sean de su especialidad, a través del Secretario Ejecutivo y de acuerdo con los lineamientos que autorice el Presidente;

VIII.Coordinar sus actividades con otras Direcciones Generales o unidades de la Comisión cuando así lo requiera el buen funcionamiento de la misma;

IX.Firmar los acuerdos o resoluciones de trámite que sean de su competencia;

X.Inspeccionar, supervisar y aplicar la normatividad interna de la Comisión;

XI.Aplicar los mecanismos de cooperación e intercambio de información con las distintas dependencias y entidades de la Administración Pública Federal, de los estados, los municipios u otros organismos públicos o privados, siempre que no se trate de información confidencial y de acuerdo con los lineamientos que hayan sido aprobados;

XII.Dar el debido cumplimiento a los sistemas de documentación, transmisión e intercambio de información;

XIII.Proponer al Presidente o al Secretario Ejecutivo la celebración de bases de concertación y colaboración con otras dependencias, entidades, instituciones u organismos públicos o privados, con el objeto de facilitar el despacho de los asuntos que les correspondan; y

XIV.Los demás que les señalen los reglamentos de la Ley u otros ordenamientos o que, mediante acuerdo de delegación, se les otorguen.

ARTICULO 28.- Corresponde a la Dirección General de Asuntos Jurídicos y Contenciosos:

I.Apoyar, conforme a los lineamientos que señale el Secretario Ejecutivo y en coordinación con la Dirección General de Estudios Económicos, en el análisis de los proyectos de iniciativas de leyes, reglamentos, acuerdos, decretos, normas oficiales mexicanas y demás disposiciones de observancia general en materia de competencia económica y libre concurrencia, incluyendo actos de autoridad;

II.Asesorar a los distintos órganos de la Comisión cuando éstos así se lo soliciten, y vigilar la legalidad de la actuación de los servidores públicos de la Comisión en el ejercicio de sus atribuciones;

III.Proponer a la Secretaría Ejecutiva la interpretación y los criterios generales de aplicación de las disposiciones normativas;

IV.Opinar respecto de los dictámenes que le turnen otras Direcciones Generales, y supervisar o tramitar el desahogo de los procedimientos jurídicos que realice la Comisión, incluyendo el conocimiento, trámite o desahogo de las pruebas en los mismos y del incidente de suspensión de la ejecución de resoluciones;

V.Representar a la Comisión en toda clase de procedimientos judiciales, administrativos, contenciosos administrativos y laborales, y coadyuvar en la elaboración de los informes justificados en los juicios de amparo, así como presentar denuncias o querellas ante el Ministerio Público en los casos en que procedan;

VI.Asesorar a los órganos de la Comisión en los asuntos laborales relativos al personal, incluyendo las prácticas y levantamiento de constancias y actas administrativas, y dictaminar sobre las bajas y demás sanciones que procedan respecto del personal;

VII.Expedir, por acuerdo del Secretario Ejecutivo, órdenes de presentación de documentación o información conforme a lo dispuesto por los artículos 21 ó 31 de la Ley, así como citar a declarar a quienes tengan relación con los casos de que se trate, aplicando en su caso las medidas de apremio señaladas por la Ley;

VIII.Supervisar la debida cumplimentación de las resoluciones de la Comisión, notificando al Secretario Ejecutivo el incumplimiento o insuficiencia en su ejecución;

IX.Señalar las bases y requisitos legales a que deban sujetarse los convenios y contratos que suscriba la Comisión, dictaminarlos y llevar registro de los mismos;

X.Recibir, tramitar y proponer los dictámenes sobre los recursos de reconsideración que se interpongan ante la Comisión, de conformidad con el artículo 39 de la Ley; y

XI.Vigilar la aplicación de las medidas de apremio previstas en el artículo 34 de la Ley y proponer al Secretario Ejecutivo, en coordinación con las Direcciones Generales competentes, el monto de la multa que corresponda.

ARTICULO 29.- Corresponde a la Dirección General de Estudios Económicos:

I.Realizar el análisis técnico-económico de los diversos mercados de bienes y servicios, de acuerdo con las políticas aprobadas por el Pleno;

II.Realizar los estudios técnicos para la resolución de los casos que se presenten ante la Comisión;

III.Estudiar leyes, reglamentos y normatividad vigente o en proyecto, así como los actos de autoridad, para determinar su impacto en la competencia económica y libre concurrencia, en coordinación con las Direcciones Generales correspondientes;

IV.Analizar el comportamiento de los distintos agentes económicos en los sectores regulados, por lo que respecta a competencia económica;

V.Estudiar las políticas, legislación y análisis de mercado en otros países, en materia de competencia económica y libre concurrencia para los efectos que el Presidente, algún comisionado, la Secretaría Ejecutiva o la misma Dirección General determine; y

VI.Formular estudios y elaborar propuestas para establecer las políticas de competencia de la Comisión.

ARTICULO 30.- Corresponde a la Dirección General de Concentraciones:

I.Estudiar y dictaminar los casos que en materia de concentraciones se presenten a la Comisión, así como colaborar con las demás áreas en los asuntos en que se lo soliciten;

II.Estudiar los sectores económicos regulados y dictaminar, en lo conducente, los casos que en esta materia se presenten a la Comisión;

III.Proponer las condiciones conforme a las cuales deban ser aprobadas las concentraciones y supervisar su cumplimiento;

IV.Expedir por acuerdo del Secretario Ejecutivo, requerimientos de datos o documentos adicionales conforme a lo dispuesto por el artículo 21 de la Ley;

V.Estudiar los mercados, de acuerdo a los niveles de concentración o participación de los agentes económicos, así como las experiencias, normatividad y casos de concentraciones internacionales;

VI.Llevar el registro de las autorizaciones u observaciones que formule la Comisión, conforme a las normas aplicables; y

VII.Estudiar y hacer propuestas en materia de leyes, reglamentos y normatividad vigente o en proyecto, así como en materia de actos de autoridad relacionados con concentraciones, en coordinación con las Direcciones Generales correspondientes.

ARTICULO 31.- Corresponde a la Dirección General de Investigaciones:

I.Iniciar y coordinar las investigaciones que se lleven a cabo de oficio o a instancia de parte por la Comisión, así como colaborar con las demás áreas en los asuntos en que se lo soliciten;

II.Expedir, por acuerdo del Secretario Ejecutivo, órdenes de presentación de documentación o información conforme a lo dispuesto por el artículo 31 de la Ley, así como citar a declarar a quienes tengan relación con los casos de que se trate, utilizando en su caso las medidas de apremio señaladas por la Ley;

III.Dictaminar los casos en que haya intervenido;

IV.Coordinar acciones conjuntas con otras instituciones o dependencias públicas o privadas, nacionales o extranjeras, así como solicitar información, cuando lo requiera la naturaleza de la investigación;

V.Supervisar, en coordinación con la Dirección General de Asuntos Jurídicos y Contenciosos, el desarrollo de las diligencias, evaluar los resultados de las mismas, y formular los informes correspondientes, así como las observaciones que considere pertinentes; y

VI.Recabar pruebas y cualquier otro elemento de convicción en los casos e investigaciones a su cargo, de acuerdo con las políticas de la Comisión, y en coordinación con la Dirección General de Asuntos Jurídicos y Contenciosos.

ARTICULO 32.- Corresponde a la Dirección General de Administración:

I.Proponer al Secretario Ejecutivo las medidas técnicas y administrativas que estime convenientes para la mejor organización y funcionamiento de la Comisión;

II.Atender las necesidades administrativas de información interna, de acuerdo con los lineamientos señalados por la Secretaría Ejecutiva;

III.Proponer al Secretario Ejecutivo el proyecto de programa y presupuesto anual de la Comisión, así como vigilar su cumplimiento y realizar su evaluación, proponiendo las modificaciones pertinentes;

IV.Autorizar, conforme a los lineamientos que señale el Secretario Ejecutivo, la documentación necesaria para las erogaciones con cargo al presupuesto, así como presentar las que deban ser autorizadas conforme a la normatividad aplicable;

V.Atender, conforme a los lineamientos que señale el Secretario Ejecutivo, los asuntos del personal, su capacitación y el mejoramiento de sus condiciones económicas, sociales, culturales y de trabajo;

VI.Tramitar los nombramientos de los servidores públicos, y los movimientos del personal y resolver, en coordinación con la Dirección General de Asuntos Jurídicos y Contenciosos, los casos de terminación de los efectos del nombramiento de conformidad con las disposiciones jurídicas aplicables; así como emitir y, en su caso, certificar las constancias relativas al puesto o cargo que ocupen o hayan ocupado, sueldos y demás actividades inherentes de conformidad con los lineamientos que señalen el Presidente y el Secretario Ejecutivo;

VII.Participar en la elaboración de las condiciones generales de trabajo, coordinar los estímulos y recompensas establecidos, y vigilar, en coordinación con la Dirección General de Asuntos Jurídicos y Contenciosos, su cumplimiento y difusión;

VIII.Ejecutar, en coordinación con la Dirección General de Asuntos Jurídicos y Contenciosos, las sanciones administrativas a que se haga acreedor el personal de la Comisión, de conformidad con los lineamientos establecidos por el Presidente o por el Secretario Ejecutivo;

IX.Autorizar, en coordinación con la Dirección General de Asuntos Jurídicos y Contenciosos, los contratos de *arrendamiento, adquisiciones, prestación de servicios* o cualquier otro que implique actos de administración, que celebre la Comisión, conforme a los lineamientos que señale el Secretario Ejecutivo;

X.Proponer a la Secretaría Ejecutiva los programas administrativos de operación, equipamiento, normatividad, vigilancia y seguridad, así como de racionalización del presupuesto, conforme a los lineamientos que señale la misma; y

XI.Determinar y difundir los lineamientos y normas para el diseño y desarrollo de los sistemas informáticos y electrónicos que la Comisión requiera.

TITULO TERCERO
DE LOS IMPEDIMENTOS Y EXCUSAS

ARTICULO 33.- Cada comisionado estará impedido de conocer cualquier asunto o caso en el que tenga interés directo o indirecto en los términos del artículo 26, último párrafo, de la Ley. Se considera que existe un interés directo o indirecto, cuando:

I.Tenga parentesco en línea recta, sin limitación de grado, en la colateral por consanguinidad, hasta el cuarto grado, y en la colateral por afinidad, hasta el segundo, con alguno de los interesados, sus representantes;

II.Tenga amistad íntima con alguna de las personas a que se refiere la fracción anterior;

III.Tenga interés personal en el asunto, o lo tenga su cónyuge;

IV.Sea heredero, legatario, donatario o fiador de alguno de los interesados, si el comisionado ha aceptado la herencia, el legado o la donación;

V.Haya sido perito, testigo, apoderado, patrono o defensor en el asunto de que se trata, o haya gestionado o recomendado anteriormente el asunto, en favor o en contra de alguno de los interesados;

VI.Esté en una situación que pueda afectar su imparcialidad en forma análoga a las anteriores.

Los comisionados tienen la obligación de excusarse del conocimiento de los negocios en que se presente alguno de los impedimentos señalados en este artículo, expresando concretamente la causa del impedimento, en cuyo caso el Pleno calificará la excusa.

TITULO CUARTO
DE LA RESPONSABILIDAD DE LOS SERVIDORES PUBLICOS DE LA COMISION

ARTICULO 34.- Los funcionarios y demás empleados de la Comisión estarán sujetos a responsabilidad administrativa en los casos de divulgación indebida de la información que obtengan en el ejercicio de sus funciones, sin perjuicio de la responsabilidad civil o penal que pudiera resultar.

TITULO QUINTO
DE LAS MEDIDAS DE APREMIO

ARTICULO 35.- De conformidad con lo dispuesto por el artículo 34 de la Ley, la Comisión, a través de los servidores públicos competentes, podrá hacer uso de las medidas de apremio señaladas, en forma indistinta.

TRANSITORIO

UNICO.- El presente reglamento entrará en vigor al día siguiente de su publicación en el Diario Oficial de la Federación.

Publicado en el Diario Oficial de la Federación el 12 de octubre de 1993.

DIRECTORIO

COMISION FEDERAL DE COMPETENCIA

Presidente
Dr. Santiago Levy Algazi

Comisionados

Lic. Javier Aguilar Alvarez
Lic. Pedro Bosch García
Dr. Pascual García Alba Iduñate
Dr. Santiago Levy Algazi
Dr. Leonel Pereznieto Castro

Secretario Ejecutivo
Lic. Gabriel Castañeda Gallardo

Director General de Concentraciones,
Dr. Aslan Cohen Cohen

Director General de Administración,
Lic. Armando González González

Director General de Estudios Económicos,
Dr. Rafael del Villar Alrich

Dirección General de Investigaciones,
Lic. José Guillermo Zozaya

Director General Jurídico,
Lic. Miguel Rosillo Sánchez

Consultas:

Para mayor información y formatos para denuncias y notificaciones de concentraciones, favor de recurrir a la Oficialía de Partes de la Comisión, Tamaulipas No. 150, Col. Hipódromo Condesa, México, D.F. 06140, México, o llamar al teléfono 286-23-92.

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Annex III

SLOVAK REPUBLIC

Act No. 188 "Protection of Economic Competition"

THE ACT No. 188

of the NATIONAL COUNCIL of the SLOVAK REPUBLIC
of July 8, 1994

ON PROTECTION OF THE ECONOMIC COMPETITION

The National Council of the Slovak Republic has adopted this Act:

Part I
INTRODUCTORY PROVISIONS

Article 1
Purpose of the Act

The purpose of this Act is to protect economic competition in the markets for products and services (hereinafter only "goods") against prevention, restriction or distortion (hereinafter only "restriction on competition") as well as to create conditions for its further development, in order to promote economic progress for the benefit of consumers.

Article 2
Scope of the Act

(1) This Act shall apply to:

(a) entrepreneurs[1], other natural persons and legal persons who undertake economic activities and their associations (hereinafter only "entrepreneurs");

(b) state administrative authorities and municipalities in their administrative activities which are linked to economic competition.

(2) This Act shall apply to all activities and negotiations, with the exception of restrictions on competition to the extent ensuing from special laws.[2]

(3) This Act shall also apply to activities and negotiations taking place abroad, if they lead or may lead to a restriction on competition in the domestic market.

(4) This Act shall not apply to a restriction on competition with exclusive effects in a foreign market, unless international agreements binding for the Slovak Republic state otherwise.

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[1] Article 2, Paragraph (2) of the Commercial Code.

[2] E. g. Article 2 of the Act No. 222/1946 Coll. of Laws on Postal Services;
Articles 5 and 7 of the Act No. 2/1991 Coll. of Laws on Collective Bargaining;
Article 18 of the Act of the National Council of the Slovak Republic No. 566/1992 Coll. of Laws on the National Bank of Slovakia,
Article 1 of the Act of the National Council of the Slovak Republic No. 7/1993 Coll. of Laws on Establishing of the National Insurance and on Financing of Health Insurance, Sickness Insurance and Retirement Insurance

Part II

TYPES OF THE UNLAWFUL RESTRICTIONS ON COMPETITION AND CONCENTRATION

Agreements Restricting Competition

Article 3

(1) Agreements and concerted practices between entrepreneurs as well as decisions of their associations whose object or effect is or may be the restriction on competition (hereinafter only "agreements restricting competition") are prohibited, if this Act does not state otherwise.

(2) There are prohibited agreements restricting competition that involve in particular:

(a) direct or indirect fixing of prices;
(b) commitment to limit or control production, sales, technical development, or investment;
(c) division of the market or of sources of supply;
(d) commitment by the parties to the agreement that different conditions of trade, relating to the same subject matter of the contract will be applied to individual entrepreneurs that will disadvantage some of them in competition;
(e) conditions that conclusion of contracts will require the acceptance of supplementary obligations which are not related to the subject of these contracts either by their nature or according to commercial usage.

(3) The agreements restricting competition prohibited in accordance with Paragraph (1) shall be void. If the reason for nullity is related only to a part of the agreement, then only that particular part is void. If the portion of the agreement restricting competition cannot be separated from the remainder of the agreement, then the entire agreement is void.

Article 4

(1) Agreements for the transfer of rights or the grant of licences over inventions, industrial designs, trade marks, names of entrepreneurs, protected varieties of plants or breeds of animals, utility models and protected topographies of semiconductor products[3] or part of these agreements are prohibited and void in accordance with Article 3, if restrictions on competition imposed to an acquirer of these rights are not necessary for the safeguarding of existence of these rights.
The same shall apply to agreements granting rights to works and performances protected under the Authorship Act.[4]

(2) The provision of Paragraph (1) shall apply similarly to transfer of rights or the granting of licences over objects of industrial ownership and to manufacturing and commercial knowledge and experience (know-how) that are not protected by special laws.

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[3] Act No. 527/1990 Coll. of Laws on Inventions, Industrial Designs and Rationalization Proposals;
Act No. 174/1988 Coll. of Laws on Trade Marks;
Article 18 of the Commercial Code (protection of names of entrepreneurs);
Act No. 132/1989 Coll. of Laws on Protection of Rights to New Varieties of Plants and Breeds of Animals;
Act No. 478/1992 Coll. of Laws on Utility Models;

[4] Act No. 35/1965 Coll. of Laws on Literal, Scientific and Artistic Works (The Authorship Act) as amended.

Article 5

(1) The ban in accordance with Articles 3 and 4 shall not apply to agreements restricting competition that at the same time:

(a) contribute to improving the production or distribution of goods or to promoting technical or economic progress;
(b) allow users a fair share of the resulting benefit;
(c) do not impose on the parties to the agreement restricting competition such restrictions which are not indispensable to the attainment of these objectives; and
(d) do not afford the parties to the agreement restricting competition the possibility of eliminating competition in respect of a substantial part of the goods in question.

(2) Antimonopoly Office of the Slovak Republic[5] (hereinafter only the "Authority") may require entrepreneurs to prove that their agreements restricting competition fulfil the conditions set out in Paragraph (1).

(3) Entrepreneurs can apply to the Authority for a decision, whether the agreements restricting competition within the meaning of Articles 3 and 4 fulfil the conditions described in Paragraph (1), (negative clearance).

(4) The Authority shall issue a decree with detailed provisions of the conditions described in Paragraph (1).

Article 6

The Authority shall modify or withdraw the decision in accordance with Article 5, Paragraph (3), if:

(a) circumstances decisive for its issuing have changed substantially;
(b) the decision was based on untrue or incomplete data, or was induced by a deceit.

Article 7
Abuse of a Dominant Position in the Market

(1) A dominant position in the market is held by one entrepreneur or by several entrepreneurs, who are not subjected to substantial competition, or as a result of their economic strength they can behave independently from other entrepreneurs and consumers and can restrict competition.

(2) If it is not proved otherwise, it shall be presumed that an entrepreneur is not subjected to substantial competition within the meaning of Paragraph (2), if his share of supply or purchase of identical or inter-changeable goods in the relevant market is at least 40 per cent.

(3) Relevant market is a geographical and temporal equilibrium of supply and demand of such group of goods, which are for the satisfaction of certain needs of users identical or mutually interchangeable. Relevant market is defined in product, geographical and time dimensions.

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[5] Articles 20 and 23 of the Act No. 347/1990 Coll. of Laws on Organization of Ministries and Other Central State Administrative Bodies of the Slovak Republic as amended.

(4) Abuse of a dominant position in the market is prohibited.

(5) The abuse of a dominant position in the market is in particular:

(a) direct or indirect enforcement of disproportionate conditions in contracts;

(b) restricting the production, sale or technological development of goods to the detriment of consumers;

(c) applying different conditions for equal or comparable transactions to individual entrepreneurs in the market, which constituting a competitive disadvantage;

(d) making the conclusion of the contract conditional upon another party accepting additional conditions, unrelated to the object of the contract both in substance and in customary commercial practice.

Concentration
Article 8

(1) A concentration shall be a process of an economic combining through:

(a) merger or amalgamation of two or more previously independent entrepreneurs or transfer of an enterprise, or a part of an enterprise to another entrepreneur; or

(b) acquisition of control by one or more entrepreneurs over an enterprise of another entrepreneur or over a part of it.

(2) Acquisition of control within the meaning of Paragraph (1), part (b) is the possibility to exercise decisive influence on an enterprise's activities, especially by means of:

(a) ownership or the right to use the whole enterprise or a part thereof;

(b) rights, contracts or other means which permit the exercise of decisive influence on composition, voting or decisions of the organs of the enterprise.

(3) A creation of an enterprise jointly controlled by several entrepreneurs (joint venture) shall be deemed to be an acquisition of control within the meaning of Paragraph 1, part (b).

(4) A concentration shall not be deemed where:

(a) credit and other financial institutions or insurance companies temporarily acquire securities providing control over an enterprise of another entrepreneur or over a part thereof with the view to reselling it, provided they do not exercise voting or other rights with a view to determining the competitive behaviour of that enterprise;

(b) temporary acquiring of control over an enterprise of another entrepreneur or over a part thereof is ensuing from special laws.[6]

Article 9

(1) Concentration is subject to control by the Authority, if:

(a) the combined turnover of the participants of the concentration is at least 300 million Slovak crowns and at least two of the participants of the concentration achieved turnover, each one at least 100 million Slovak crowns for the previous accounting time period[7]; or

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6) Article 11 of the Act No. 92/1991 Coll. of Laws on Conditions of Transfer of the State Property to Other Persons as amended;
Articles 4a and 8 of the Act No. 328/1991 Coll. of Laws on Bankruptcy as amended;
Article 68 of the Commercial Code (on liquidation of an undertaking).

7) Article 3 of the Act No. 563/1991 Coll. of Laws on Book-keeping.

(b) the joint share of the participants of concentration exceeds 20 per cent of the total turnover in identical or interchangeable goods in the market of the Slovak Republic.

(2) The combined turnover or joint share within the meaning of Paragraph (1) shall be the sum of turnovers of:

(a) participants of concentration;
(b) entrepreneurs, in which the participant of concentration owns more than half of the capital, or has the power to exercise more than half of the voting rights, or the power to appoint more than half of the members of organs of the enterprise, or the right to manage the enterprise;
(c) entrepreneur who owns or has the rights described in part (b) in an enterprise of the participant of concentration;
(d) all other entrepreneurs in which the entrepreneur mentioned in part (c) owns or has the rights described in part (b).

(3) If a mutual fund or investment company acquires control over an enterprise of another entrepreneur, the combined turnover or joint share within the meaning of Paragraph (1) shall be the sum of turnovers of entrepreneurs in which the mutual fund or investment company - including all mutual funds administered by the investment company - owns more than 10 per cent of the capital, or has the right to exercise more than 10 per cent voting rights, or has the right to manage the enterprise.

(4) The concentration which is subject to control within the meaning of Paragraph (1) must be notified to the Authority within 15 days after the submission of the bid in a public tender, or the conclusion of the agreement, or the acquisition of control over an enterprise of another entrepreneur or over a part thereof by other means.

(5) The notification of concentration in accordance with Article 8, Paragraph 1 part (a) and Paragraph (3) shall be submitted by the participants jointly, and in other cases shall be submitted by the entrepreneur who acquired control over an enterprise of another entrepreneur or over a part thereof. The notification must contain:

(a) a written agreement or description of the means, by which concentration will occur;
(b) identification data on participants of concentration to the extent in which they are registered in the Commercial Register;
(c) data on property and personnel linkage of each of the participants involved in concentration;
(d) calculations of shares in the relevant markets, balance sheets and financial statements of the participants of concentration for the previous accounting time period including entrepreneurs by property or personnel linked to them;
(e) reasons and effects of concentration and its impact on competition;
(f) the list of main suppliers, buyers and competitors of the participants of concentration in the relevant markets.

(6) It is prohibited for the participants of the concentration which is subject to control within the meaning of Paragraph (1), to realize any such measures connected with concentration that could lead to irreversible changes, and this in time period before the notification to one month after the notification. The Authority may at the request of the participants of concentration grant an exemption from the ban, if there is a danger of damage to the participants of concentration or other legal persons or natural persons. The decision may be made subject to conditions in order to preserve market structure before concentration.

Article 10

(1) On the basis of the notification of concentration, the Authority shall issue within one month from its submission a decision on concentration, and in case the Authority shall not issue a decision, it shall issue a preliminary ruling that will prolong suspension of concentration in accordance with Article 9, Paragraph (6). If the Authority has issued a preliminary ruling, the decision on concentration will be issued within three months after the issuing of the preliminary ruling. If the Authority shall not decide within stipulated time period, then it means that it shall acquiesce to the concentration. The stipulated time period does not begin if the notification is incomplete and the Authority shall call participant's attention on insufficiency of the notification in written form.

(2) The Authority shall prohibit the concentration if it creates or strengthens a dominant position in the market unless the participants prove that the harm which results from the restriction on competition will be outweighed by overall economic advantages of the concentration.

(3) If the concentration is not contrary to this Act, the Authority shall issue a decision that it agrees with concentration. The Authority can impose conditions for completion of concentration connected to competition.

(4) The Authority shall change or withdraw a decision in accordance with Paragraphs (1) to (3), if:

(a) the concentration was completed other than as notified, or the participants of concentration have acted in contravention of the conditions established in decision;
(b) the decision was based on untrue or incomplete data submitted by the participants of concentration or was induced by deceit.

(5) If the concentration which is subject to control within the meaning of Article 9, Paragraph (1) was consummated without notification, the Authority may impose measures for remedy, including division of an enterprise of the participants on concentration. The Authority shall act in this way only if the conditions for prohibition of concentration according to the Paragraph (2) are met.

Part III

THE AUTHORITY

Article 11

(1) The Authority is entitled:

(a) to investigate and to determine the position of entrepreneurs in the relevant market;
(b) to issue the decision whether the agreement restricting competition is prohibited and void in accordance with Articles 3 and 4;
(c) to issue the decision on obligation to refrain from fulfilment of agreement restricting competition and to remedy a breach;
(d) to decide whether the agreement restricting competition fulfils conditions described in Article 5;
(e) to issue the decision, whether certain behaviour is by its nature an abuse of dominant position in the market in accordance with Article 7;
(f) to issue the decision on obligation to refrain from the abuse of a dominant position in the market and to remedy a breach, if it is in contrary with Article 7;
(g) to issue the decision whether a concentration is under control of the Authority in accordance

with Articles 8 and 9 and to issue the decision granting an exemption from the ban to realize measures within the meaning of Article 9, Paragraph (6);

(h) to issue decisions on concentration in accordance with Article 10;

(i) to issue preliminary rulings in accordance with Articles 10 and 12, Paragraph (6);

(j) to impose fines on entrepreneurs in accordance with Article 14;

(k) to publicize notifications of the concentrations, decisions of the Authority, which have come into force and additional corrective measures;

(l) to control implementation of decisions issued in proceedings by the Authority;

(m) to require state administrative and local bodies to remedy the state of affairs in accordance with Article 18;

(n) to conduct general inquiry into particular economic sectors, if restriction on competition has occurred in them;

(o) to propose other measures for protection and support of competition.

(2) In the execution of this Act the employees of the Authority have the right to request from entrepreneurs all materials and information which are necessary for activities of the Authority, in particular:

(a) business records or legal documents and to take copies or extracts from them;

(b) to ask for oral or written explanation on the spot;

(3) When fulfilling the goals of this Act the employees of the Authority have the right to enter any premises, land and means of transportation of entrepreneurs.

(4) The Authority may request from other state administrative bodies materials and information about the entrepreneur, which are protected by special laws.[8]

(5) The Authority shall represent the Slovak Republic in international negotiations about agreements in the area of the economic competition.

Part IV
PROCEEDINGS BEFORE THE AUTHORITY

Article 12

(1) Proceedings before the Authority shall begin on its own initiative or if petitioned by an entrepreneur.

(2) The participants in the proceedings shall be the petitioner and the entrepreneurs about whose rights, interests protected by the law or duties stipulated by this Act shall be decided.

(3) In cases in which a special law stipulates an obligation to pay an administrative fee, the petitioner must submit a receipt indicating payment of the administrative fee.

(4) The Authority may stop the proceedings, if

(a) the petitioner does not eliminate insufficiency of the petition or does not submit requested materials and information within the time period stated by the Authority;

(b) the petitioner has withdrawn its petition;

(c) reason for proceedings did not exist or ceased to exist.

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[8] E. g. Article 36 of the Act No. 322/1992 Coll. of Laws on State Statistics;
Article 28 of the Act No. 248/1992 Coll. of Laws on Investment Companies and Mutual Funds

(5) If the nature of the case requires, the Authority shall make its decision following a hearing, to which the participants shall be invited. The Authority is obliged to ask participants in the proceedings to make submissions on the subject matter of the proceedings and on the outcome of the investigations carried out by the Authority.

(6) In proceedings begun in accordance with the preceding Paragraphs, the Authority is entitled to issue a preliminary ruling temporarily governing legal relations until the final decision is reached, if this is necessary to safeguard legitimate interests or if execution of the final decision would otherwise be thwarted or seriously hampered.

(7) Unless stated otherwise in this Act, proceedings before the Authority are governed by the provisions of the Administrative Procedure Act.9)

Article 13

(1) If a party to the proceedings disagrees with the final decision of the Authority, it may bring an action before the Supreme Court requesting a review of the decision.10)

(2) The deadline for bringing an action in accordance with Paragraph (1) is 30 days from the date on which the decision was delivered to the party to the proceedings.

Article 14
Fines

(1) The Authority is entitled to fine entrepreneurs for breaching duties stipulated by this Act according to its importance up to 10 per cent of their turnover for the previous accounting time period and if it is not possible to calculate the turnover, up to 10 million Slovak crowns. If it is proved that the entrepreneur obtained material profit from breaching a duty, the fine shall be at least equal to this profit. The Authority cannot impose a fine to entrepreneurs that applied for the decision within the meaning of Article 5, Paragraph (3).

(2) The Authority may impose a fine up to 1 million Slovak crowns to an entrepreneur who does not submit in the determined time period the requested material or true information or who do not allow their inspection or entry in accordance with Article 11, Paragraphs (2) and (3).

(3) The Authority may impose a fine up to 100 000 Slovak crowns to entrepreneur who does not participate in hearings without having any serious reason for not doing so, or who by their action make the process of the proceedings more difficult.

(4) The Authority may impose a fine up to the amount described in Paragraph (1) to entrepreneur who does not keep with the decision of the Authority which came into force.

(5) The fines, described in the previous paragraphs, may be imposed even repeatedly.

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9) Act No. 71/1967 Coll. of Laws on Administrative Proceedings (The Administrative Procedure Act).

10) Article 244 of the Civil Procedure Code.

(6) The fines in accordance with Paragraphs (1), (2) and (4) may be imposed by the Authority within one year of discovery of the breach, however, at least within three years following the day in which the breach of duty occurred.

(7) If an entrepreneur fails to pay the imposed fine before the set deadline, he shall be obliged to pay a penalty 0,5 per cent of the amount of the imposed fine per day of delay.

Part V

OBLIGATIONS OF THE ENTREPRENEURS AND CONFIDENTIALITY

Article 15

Entrepreneurs are obliged to deliver to the Authority requested materials and information and to submit its investigations in accordance with Article 11, Paragraph (2), to cooperate with the Authority in its examination and to allow employees of the Authority to enter any premises, land and means of transportation of entrepreneurs.

Article 16

(1) Materials and information acquired by the Authority from entrepreneurs may be used only for the purpose for which they were requested.

(2) All employees of the Authority as well as those entrusted with occurred tasks that fall within the competence of the Authority, are required to keep as confidential all facts relating to the commercial secrets[11] which they have learned in connection with the implementation of their professional duties.

Part VI

CIVIL LAW LITIGATIONS ARISING FROM UNLAWFUL RESTRICTION ON COMPETITION

Article 17

(1) Consumers whose rights have been violated by unlawful restriction on competition may require the violating party to refrain from behaviour or to remedy the breach. This right may also be claimed by a legal person authorized to protect the interests of consumers.

(2) After the commencement or the final conclusion of litigation to halt such unlawful conduct or rectify such a detrimental situation, lawsuits brought by other entitled persons involved in the same matter shall not be admissible; these other entitled persons may, however, join the proceedings as subsidiary participants according to special provisions.[12] A legitimate ruling on such claims - providing it is made to only one claimant - shall similarly be applied to the other entitled persons.

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11) Article 17 of the Commercial Code.

12) Article 93 of the Civil Procedure Code.

(3) The procedure for raising claims in accordance with Paragraph (1) is governed by civil law regulations, if not stated otherwise by this Act. The court may permit the party who won the case the right to have the judgement publicized at the expense of the losing party and if necessary, may determine the scope, manner and form of the publication. The cost of the proceedings shall be governed by the respective provisions of the Civil Procedure Code.[13]

Part VII

INTERVENTIONS BY THE STATE ADMINISTRATIVE AUTHORITIES AND MUNICIPALITIES

Article 18

(1) State administrative authorities and municipalities may not, by their own actions, by support or in any other way, restrict competition.

(2) The Authority shall supervise the observance of Paragraph (1). Based on evidence and an assessment of the effect, the Authority may require state administrative authorities or municipalities to remedy the state of affairs.

Part VIII

SUPPORT OF ECONOMIC COMPETITION DURING THE PRIVATIZATION PROCESS

Article 19

(1) State organizations and state administrative bodies are required, when transferring state property to other persons within the meaning of the special law[14] to proceed in the way that secures appropriate de-concentration of privatized enterprises. Where the state organization's market share has exceeded the threshold stipulated in Article 7 Paragraph (2), the state administrative body which is the establisher or creator of the state organization (hereinafter only "establisher") shall ensure the carrying out of an assessment, containing in particular:

(a) determining of market share of the state organization and expected market share of a new enterprise in the relevant market;

(b) an assessment of the competitiveness of the new enterprise taking into account its existing involvement in the world market and foreseeable foreign competition in the domestic market, particularly taking into account the technological level, the size of the competing enterprises and other considerations characteristic of competitiveness in a certain field of industry;

(c) turnover of the state organization for the previous accounting time period.

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13) Article 137 of the Civil Procedure Code.

14) Act No. 92/1991 Coll. of Laws on Conditions of Transfer of State Property to Other Persons as amended.

(2) The Authority shall be required to advance its view to the draft of privatization project submitted by the establisher in accordance with the special law[15] from the viewpoint appropriate de-concentration described in Paragraph (1) within 8 working days. If the establisher disagrees with the ruling of the Authority, then the case will be decided by the government of the Slovak Republic, following an appeal of the establisher.

(3) If the Ministry for Administration and Privatization of National Property of the Slovak Republic (hereinafter only "Ministry") when approving draft of the privatization project shall proceed in the way that it changes conditions for appropriate de-concentration contained in the draft of the privatization project, the Ministry shall be required to submit a draft of the privatization project to the Authority for review. The Authority shall be required to advance its view to it from the viewpoint of the appropriate de-concentration described in Paragraph (1) within 8 working days. If the Ministry disagrees with the ruling of the Authority, the case will be decided by the Government of the Slovak Republic, following an appeal of the Ministry.

(4) If direct sale of property of the state organization or a part thereof shall be proposed and the combined turnover of the state organization, or as the case may be its privatized part and the entrepreneur who would acquire this property in accordance with draft of the privatization project will reach threshold settled in Article 9, the entrepreneur shall proceed in accordance with suitable provisions of Articles 8 and 9. When determining turnover the Article 9 shall be applied analogous. Notification of intention to acquire the property shall be submitted by entrepreneur at whatever time, at least when submitting draft of the privatization project to the establisher. The Authority shall proceed in accordance with suitable provisions of Articles 8 to 10 analogous.

Article 20

Actions by Municipalities to Prevent the Creation of Dominant Position of Entrepreneurs During the Transfer of Municipal Property

Municipalities during the transfer of municipal property are required to care of the creation of a competitive environment in respective regional or local markets.

Article 21

(1) Decisions of the associations of entrepreneurs accordance with Articles 3 which were adopted before this Act came into force and their effects continue for the next time, shall be harmonized to this Act by entrepreneurs within three months time period after this Act shall come into force, otherwise they shall be void.

(2) Proceedings before the Authority which had begun before the day in which this Act came into force, will be resolved according to the recent provisions of the Act.

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15) Article 8 Paragraph (1) of the Act No. 92/1991 Coll. of Laws as amended.

Part IX
FINAL PROVISIONS

Article 22

The Government of the Slovak Republic by its order may set the limits described in Article 9 Paragraph (1) for some industries or may modify these limits according to a development of the economic conditions.

Article 23

Provision of the Article 7 on dominant position in the market and relevant market shall apply analogous to other provisions of the Act, in which these terms are applied.

Article 24

The Act No. 63/1991 Coll. of Laws on Protection of Economic Competition as amended by the Act No. 495/1992 Coll. of Laws shall be hereby repealed.

Article 25

This Act shall come into force on August 1, 1994.

Annex IV

REPUBLIC OF ZAMBIA

"The Competition and Fair Trading Act" No. 18, 1994

THE COMPETITION AND FAIR TRADING ACT, 1994

ARRANGEMENT OF SECTIONS

PART I
PRELIMINARY

Section

1. Short title and commencement
2. Interpretation
3. Non-application

PART II
ZAMBIA COMPETITION COMMISSION

4. Establishment of Commission
5. Seal of Commission
6. Functions of Commission

PART III
ANTI-COMPETITIVE TRADE PRACTICES, ETC.

7. Enumeration of anti-competitive trade practices
8. Control of mergers and takeovers
9. Trade agreements
10. Anti-competitive trade practices by associations
11. Criteria for controlling monopolies and concentrations of economic power
12. Unfair trading
13. Authorisation of allowable acts
14. Powers of Executive Director

PART IV
GENERAL

15. Appeals
16. Offences and penalties
17. Regulations
SCHEDULE—Zambia Competition Commission

Single copies of this Act may be obtained from the Government Printer,
P.O. Box 30136, Lusaka 10100. Price K375.00 each.

GOVERNMENT OF ZAMBIA

ACT

No. 18 of 1994

Date of Assent: 11th May, 1994

An Act to encourage competition in the economy by prohibiting anti-competitive trade practices; to regulate monopolies and concentrations of economic power; to protect consumer welfare; to strengthen the efficiency of production and distribution of goods and services; to secure the best possible conditions for the freedom of trade; to expand the base of entrepreneurship; and to provide for matters connected with or incidental to the foregoing.

[3rd June, 1994

ENACTED by the Parliament of Zambia. **Enactment**

PART I
PRELIMINARY

Short title and commencement **1.** This Act may be cited as the Competition and Fair Trading Act, 1994, and shall come into operation on such date as the Minister may, by statutory instrument, appoint.

Interpretation **2.** In this Act, unless the context otherwise requires—

" affiliated " means associated with each other, formally or informally, by shareholding or otherwise;

" anti-competitive trade practices " means the trade practices enumerated in sections *seven*, *eight*, *nine* and *ten*;

" Chairman " means the Chairman of the Commission, elected under paragraph 1 of the Schedule;

" Committee " means a committee of the Commission, established under paragraph 5 of the Schedule;

" consumer " includes any person—

(a) who purchases or offers to purchase goods otherwise than for the purpose of resale but does not include a person who purchases any goods for the purpose of using them in the production and manufacture of any other goods or articles for sale;

(b) to whom a service is rendered;

" customer " means a person who purchases goods or services;

" distribution " includes any act by which goods are sold or services supplied for consideration;

" distributor " means a person who engages in distribution;

" Executive Director " means the Executive Director appointed under paragraph 7 of the Schedule;

" manufacturing " means transforming, on a commercial scale, raw materials into finished or semi-finished products, and includes the assembling of inputs into finished or semi-finished products but does not include mining;

" member" means a member of the Commission;

" monopoly undertaking " means a dominant undertaking or an undertaking which together with not more than two independent undertakings—

(a) produces, supplies, distributes or otherwise controls not less than one-half of the total goods of any description that are produced, supplied or distributed throughout Zambia or any substantial part of Zambia; or

(b) provides or otherwise controls not less than one-half of the services that are rendered in Zambia or any substantial part thereof;

" person " includes an individual, a company, a partnership, an association and any group of persons acting in concert, whether or not incorporated;

" sale " includes an agreement to sell or offer for sale and includes the exposing of goods for sale, the furnishing of a quotation, whether verbally or in writing, and any other act or notification by which willingness to enter into any transaction for sale is expressed;

" Secretary " means the person appointed as such under paragraph 8 of the Schedule;

" service " includes the sale of goods where the goods are sold in conjunction with the rendering of a service;

" supply ", in relation to goods, includes supply or resupply by way of sale, exchange, lease, hire or hire purchase;

" trade association " means a body of persons which is formed for the purpose of furthering the trade interests of its members or of persons represented by its members; and

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" trade practice " means any practice related to the carrying on of any trade and includes anything done or proposed to be done by any person which affects or is likely to affect the method of trading of any trader or class of traders or the production, supply or price in the course of trade of any goods, whether real or personal, or of any service.

Non-application

3. Nothing in this Act shall apply to—

(a) activities of employees for their own reasonable protection as employees;

(b) arrangements for collective bargaining on behalf of employers and employees for the purpose of fixing terms and conditions of employment;

(c) activities of trade unions and other associations directed at advancing the terms and conditions of employment of their members;

(d) the entering into an agreement in so far as it contains a provision relating to the use, licence or assignment of rights under, or existing by virtue of, any copyright, patent or trade mark;

(e) any act done to give effect to a provision of an agreement referred to in paragraph *(d)*;

(f) activities expressly approved or required under a treaty or agreement to which the Republic of Zambia is a party;

(g) activities of professional associations designed to develop or enforce professional standards reasonably necessary for the protection of the public; and

(h) such business or activity as the Minister may, by statutory instrument, specify.

PART II

ZAMBIA COMPETITION COMMISSION

Establishment of Commission

4. (1) There is hereby established the Zambia Competition Commission which shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name and with power, subject to the provisions of this Act, to do all such acts and things as a body corporate may by law do or perform.

(2) The provisions of the Schedule shall apply as at to the constitution of the Commission and otherwise in relation thereto.

Seal of Commission

5. (1) The seal of the Commission shall be such device as may be determined by the Commission and shall be kept by the Secretary.

(2) The affixing of the seal shall be authenticated by the Chairman or the Vice-Chairman and the Secretary or any other person authorised in that behalf by a resolution of the Commission.

(3) Any contract or instrument which if entered into or executed by a person not being a body corporate would not be required to be under seal may be entered into or executed without seal on behalf of the Commission by the Secretary or any other person generally or specifically authorised by the Commission in that behalf.

Functions of Council

6. (1) It shall be the function of the Council to monitor, control and prohibit acts or behaviour which are likely to adversely affect competition and fair trading in Zambia.

(2) Without limiting the generality of subsection (1), the functions of the Council shall be—

(a) to carry out, on its own initiative or at the request [illegible] person, investigations in relation to the conduct of business, including the abuse of a dominant position, so as to determine whether any enterprise is carrying on anti-competitive trade practices and the extent of such practices, if any;

(b) carry out investigations on its own initiative or at the request of any person who may be adversely affected by a proposed merger;

(c) to take such action as it considers necessary or expedient to prevent or redress the creation of a merger or the abuse of a dominant position by any enterprise;

(d) to provide persons engaged in business with information regarding their rights and duties under this Act;

(e) to provide information for the guidance of consumers regarding their rights under this Act;

(f) to undertake studies and make available to the public reports regarding the operation of this Act;

(g) to co-operate with and assist any association or body of persons to develop and promote the observance of standards of conduct for the purpose of ensuring compliance with the provisions of this Act; and

(h) to do all such acts and things as are necessary, incidental or conducive to the better carrying out of its functions under this Act.

PART III

ANTI-COMPETITIVE TRADE PRACTICES, ETC.

Enumeration of anti-competitive trade practices

7. (1) Any category of agreements, decisions and concerted practices which have as their object the prevention, restriction or distortion of competition to an appreciable extent in Zambia or in any substantial part of it are declared anti-competitive trade practices and are hereby prohibited.

(2) Subject to the provisions of subsection (1), enterprises shall refrain from the following acts or behaviour if, through abuse or acquisition of a dominant position of market power, they limit access to markets or otherwise unduly restrain competition, or have or are likely to have adverse effect on trade or the economy in general:

(a) predatory behaviour towards competition including the use of cost pricing to eliminate competitors;

(b) discriminatory pricing and discrimination, in terms and conditions, in the supply or purchase of goods or services, including by means of pricing policies in transactions between affiliated enterprises which overcharge or undercharge for goods or services purchased or supplied as compared with prices for similar or comparable transactions outside the affiliated enterprises;

(c) making the supply of goods or services dependant upon the acceptance of restrictions on the distribution or manufacture of competing or other goods;

(d) making the supply of particular goods or services dependant upon the purchase of other goods or services from the supplier to the consignee;

(e) imposing restrictions where or to whom or in what form or quantities goods supplied or other goods may be sold or exported;

(*f*) mergers, takeovers, joint ventures or other acquisitions of control whether of horizontal, vertical or conglomerate nature; or

(*g*) colluding, in the case of monopolies of two or more manufacturers, wholesalers, retailers, contractors or suppliers of services, in setting a uniform price in order to eliminate competition.

Control of mergers and takeovers

8. (1) Any persons who, in the absence of authority from the Commission, whether as a principal or agent and whether by himself or his agent, participates in effecting—

(*a*) a merger between two or more independent enterprises engaged in manufacturing or distributing substantially similar goods or providing substantially similar services;

(*b*) a takeover of one or more such enterprises by another enterprise, or by a person who controls another such enterprise;

shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding ten million kwacha or imprisonment not exceeding five years or to both.

(2) No merger or takeover made in contravention of subsection (1) shall have any legal effect and no rights or obligations imposed on the participating parties by any agreement in respect of the merger or takeover shall be legally enforceable.

Trade agreements

9. (1) It shall be an offence for enterprises engaged on the market in rival or potentially rival activities to engage in the practices appearing in subsection (2) where such practices limit access to markets or otherwise unduly restrain competition:

Provided that this subsection shall not apply where enterprises are dealing with each other in the context of a common entity wherein they are under common control or where they are otherwise not able to act independently of each other.

(2) This section applies to formal, informal, written and unwritten agreements and arrangements.

(3) For the purposes of subsection (1), the following are prohibited:

(*a*) trade agreements fixing prices between persons engaged in the business of selling goods or services, or purchase of goods or services between persons, or limit or restrict the terms and conditions of sale or supply or purchase between persons engaged in the sale of purchased goods or services;

(b) collusive tendering;

(c) market or customer allocation agreements;

(d) subject to the Coffee Act, 1989, allocation by quota as to sales and production;

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(e) collective action to enforce arrangements;

(f) concerted refusals to supply goods and services to potential purchasers; or

(g) collective denials of access to an arrangement or association which is crucial to competition.

Anti-competitive trade practices by associations

10. The following practices conducted by or on behalf of a trade association are declared to be anti-competitive trade practices:

(a) unjustifiable exclusion from a trade association of any person carrying on or intending to carry on in good faith the trade in relation to which the association is formed; or

(b) making of recommendations, directly or indirectly, by a trade association, to its members or to any class of its members which relate to—

  (i) the prices charged or to be charged by such members or any such class of members or to the margins included or to be included in the prices or to the pricing formula used or to be used in the calculation of those prices; or

  (ii) the terms of sale (including discount, credit, delivery, and product and service guarantee terms) of such member or any class of members and which directly affects prices or profit margins included in the pricing formula.

Criteria for controlling monopolies and concentrations of economic power

11. (1) The Commission shall keep the structure of production of goods and services in Zambia under review to determine where concentration of economic power exist whose detrimental impact on the economy outweigh the efficiency advantages, if any.

(2) For the purposes of subsection (1) but without limiting the generality thereof, the Commission shall consider whether—

(a) a person controls a chain of distributing units the value of whose sales accounts for a significant portion of the relevant market;

(b) a person, by virtue of controlling two or more physically distinct enterprises which manufacture substantially similar goods, supplies a significant portion of the domestic market at unreasonably low prices; or

(c) a person has substantial shares in a manufacturing enterprise and whether he simultaneously has a beneficial interest, however small, of outstanding shares in one or two wholesale or retail enterprises which distribute products of the manufacturing enterprise.

Unfair trading

12. A person shall not—

(a) withhold or destroy producer or consumer goods, or render unserviceable or destroy the means of production and distribution of such goods, whether directly or indirectly, with the aim of bringing about a price increase;

(b) exclude liability for defective goods;

(c) in connection with the supply of goods or services, make any warranty—

- (i) limited to a particular geographic area or sales point;
- (ii) falsely represent that products are of a particular style, model or origin;
- (iii) falsely represent that the goods are new or of specified age; or
- (iv) represent that products or services have any sponsorship, approval, performance and quality characteristics, components, materials, accessories, uses or benefits which they do not have;

(d) engage in conduct that is likely to mislead the public as to the nature, price, availability, characteristics, suitability for a given purpose, quantity or quality of any products or services; or

(e) supply any product which is likely to cause injury to health or physical harm to consumers, when properly used, or which does not comply with a consumer safety standard which has been prescribed under any law.

Authorisation of allowable acts

13. (1) The Commission may authorise any act which is not prohibited outright by this Act, that is, an act which is not necessarily illegal unless abused if that act is considered by the Commission as being consistent with the objectives of this Act.

(2) The Minister may, on the recommendation of the Commission, by statutory instrument, make regulations prescribing the particulars to be furnished to the Commission for the purposes of subsection (1).

PART IV

GENERAL

Powers of Executive Director

14. (1) Where the Executive Director or any officer has reasonable cause to believe that an offence under this Act or any regulations made hereunder has been or is being committed, he may seek from a court a warrant granting—

(a) authority to enter any premises;

(b) access to, or production of, any books, accounts or other documents relating to the trade or business of any person and the taking of copies of any such books, accounts or other documents:

Provided that any books, accounts or other documents produced shall be returned forthwith if they are found to be irrelevant.

(2) In the exercise of the powers contained in subsection (1), the Executive Director or other officer of the Council may be accompanied or assisted by any such police officers as he thinks necessary to assist him to enter into or upon any premises.

Appeals

15. Any person aggrieved by a decision of the Commission made under this Act or under any regulations made hereunder may, within thirty days after the date on which a notice of that decision is served on him, appeal to the High Court subject to a further appeal to the Supreme Court.

Offences and penalties

16. (1) Any person who—

(a) contravenes or fails to comply with any provision of this Act or any regulations made hereunder, or any directive or order lawfully given, or any requirement lawfully imposed under this Act or any regulations made hereunder, for which no penalty is provided;

(b) omits or refuses—

(i) to furnish any information when required by the Commission to do so; or

(ii) to produce any document when required to do so by a notice sent by the Commission; or

(c) knowingly furnishes any false information to the Commission;

shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding ten million kwacha or imprisonment for a term not exceeding five years or to both.

(2) If the offence is committed by a body corporate, every director and officer of such body corporate, or if the body of persons is a firm, every partner of that firm, shall be guilty of that offence provided that no such director, officer or partner shall be guilty of the offence if he proves on a balance of probability that such offence was committed without his knowledge or consent, or that he exercised all due diligence to prevent the commission of the offence.

Regulations

17. The Commission may, with the approval of the Minister, by statutory instrument, make regulations governing—

(a) anything which under this Act is required or permitted to be prescribed;

(b) any forms necessary or expedient for purposes of this Act;

(c) any fees payable in respect of any service provided by the Commission; or

(d) such other matters as are necessary or expedient for the better carrying out of the purposes of this Act.

SCHEDULE

(Section 4)

ZAMBIA COMPETITION COMMISSION

Composition of Commission

1. (1) The Commission shall consist of—

(a) a representative from each of the Ministries responsible for finance, and commerce and industry;

(b) a representative of the Zambia Bureau of Standards;

(c) two representatives from the Zambia Council of Commerce and Industry, each representing different sections of that body;

(d) a representative of the Law Association of Zambia;

(e) a representative of the Zambia Federation of Employers;

(f) a representative of the Zambian Congress of Trade Unions;

(g) two persons representing consumer interests and appointed by the Minister;

(h) a representative of the Engineering Institution of Zambia;

(i) a representative of the accounting profession; and

(j) the Economics Association of Zambia.

(2) All members shall be nominated by their respective institutions and shall be appointed by the Minister.

(3) The Chairman and the Vice-Chairman shall be elected by the Commission from amongst its members:

Provided that the members appointed under items *(a)* and *(b)* of sub-paragraph (1) shall not be elected as Chairman or Vice-Chairman.

Tenure of office and vacancy

2. (1) The members shall hold office for a period of three years from the date of appointment and may, upon the expiration of that term, be re-appointed for a like term and, for this purpose, paragraph 1 (2) of this Schedule shall apply.

(2) A member referred to in items *(b)*, *(c)*, *(d)*, *(e)*, *(f)*, *(g)* and *(h)* of paragraph 1 (1) of this Schedule may resign upon giving one month's notice in writing to the organisation which nominated him and to the Minister and shall be removed by the Minister at any time if the body which nominated him withdraws its recognition and so informs the Minister in writing.

(3) The office of a member shall become vacant—

(a) upon his death;

(b) if he is absent without reasonable excuse from three consecutive meetings of the Commission of which he has had notice; or

(c) if he is lawfully detained or his freedom of movement is restricted for a period exceeding six months;

(d) if he becomes an undischarged bankrupt;

(e) if he becomes of unsound mind; or

(f) by operation sub-paragraph (2).

Remuneration and allowances

3. A member shall be paid such remuneration or allowances as the Council may, subject to the approval of the Minister, determine.

Proceedings of Commission

4. (1) Subject to the other provisions of this Act, the Commission may regulate its procedure.

(2) The Commission shall meet as often as necessary or expedient for the discharge of its business and such meetings shall be held at such places, times and days as the Commission may determine.

(3) The Chairman may at any time call a meeting of the Commission and shall call a special meeting to be held within ten days of receipt of a written request for that purpose addressed to him by at least one-third of the members of the Commission.

(4) Seven members shall form a quorum at any meeting of the Commission.

(5) There shall preside at any meeting of the Commission—

(a) the Chairman;

(b) in the absence of the Chairman, the Vice-Chairman; or

(c) in the absence of both the Chairman and Vice-Chairman, such member as the members present may elect for the purpose of the meeting.

(6) The decision of the Commission shall be by a majority of members present and voting at the meeting and, in the event of an equality of votes, the Chairman or other person presiding at the meeting shall have a casting vote in addition to his deliberative vote.

(7) The Commission may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberation of a meeting of the Commission but such person shall have no vote.

(8) The validity of any proceedings, act or decision of the Commission shall not be affected by any vacancy in the member-

ship of the Commission or by any defect in the appointment of any member or by reason that any person not entitled to do so took part in the proceedings.

(9) The Commission shall cause minutes to be kept of every meeting of the Commission and of every meeting of any committee established by the Commission.

Committees of Commission

5. (1) The Commission may for the purpose of performing its functions under this Act establish committees and delegate to any such committee such of its functions as it considers necessary.

(2) The Commission may appoint as members of a committee established under sub-paragraph (1) persons who are or are not members of the Commission and such persons shall hold office for such period as the Commission may determine.

(3) Subject to any specific or general direction of the Commission, a committee established under sub-paragraph (1) may regulate its own procedure.

Disclosure of interest

6. (1) If any person is present at a meeting the Commission or committee of the Commission at which any matter is the subject of consideration and in which matter that person is directly or indirectly interested, he shall as soon as is practicable after the commencement of the meeting disclose such interest and shall not, unless the Commission or the committee otherwise directs, take part in any consideration or discussion of, or vote on, any question touching such matter.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

Executive Director of Commission

7. (1) The Commission shall appoint, on such terms and conditions as it may determine, an Executive Director who shall be the chief executive officer of the Commission.

(2) The Executive Director shall be responsible for the day-to-day administration of the Commission.

Secretary and other staff

8. (1) There shall be a Secretary to the Commission who shall be appointed by the Commission on such terms and conditions as the Commission may determine.

(2) The Secretary shall, under the general supervision of the Executive Director, carry out corporate secretarial duties.

(3) The Commission may appoint, on such terms and conditions as it may determine, such other staff as it considers necessary for the performance of its functions under this Act.

Prohibition of publication or disclosure of information to unauthorised persons

9. (1) No person shall, without the consent in writing given by or on behalf of the Commission publish or disclose to any person, otherwise than in the course of his duties, the contents of any document, communication or information which relates to and which has come to his knowledge in the course of his duties under this Act.

(2) Any person who knowingly contravenes the provisions of sub-paragraph (1) shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding six hundred thousand kwacha or to imprisonment for a term not exceeding three years or to both.

(3) If any person having information which to his knowledge has been published or disclosed in contravention of sub-paragraph (1) unlawfully publishes or communicates any such information to any other person he shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding six hundred thousand kwacha or to imprisonment for a term not exceeding three years or to both.

Immunity

10. No action or other proceeding shall lie against any member, member of staff, servant, agent or representative of the Commission for or in respect of any act done or omitted to be done in good faith in the exercise or purported exercise of his functions under this Act.

Funds of Commission

11. (1) The funds of the Commission shall consist of such moneys as may—

(a) be appropriated by Parliament for the purposes of the Commission;

(b) be paid to the Commission by way of grants or donations; and

(c) vest in or accrue to the Commission.

(2) The Commission may—

(a) accept money by way of grants or donations;

(b) raise by way of loans or otherwise from any source in Zambia and, subject to the approval of the Minister, from any source outside Zambia, such money as it may require for the discharge of its functions; and

(c) charge and collect fees in respect of programmes, publications, seminars, consultancy and other services provided by the Commission.

(3) There shall be paid from the funds of the Commission—

(a) the salaries, allowances, loans, gratuities and pensions of the staff of the Commission and other payments for the recruitment and retention of staff;

(b) such reasonable travelling and subsistence allowances for members or members of any committee of the Commission when engaged on the business of the Commission and at such rates as the Commission may determine; and

(c) any other expenses incurred by the Commission in the performance of its functions.

(4) The Commission may after the approval of the Minister, invest in such manner as it thinks fit such of its funds as it does not immediately require for the discharge of its functions.

Financial year

12. The financial year of the Commission shall be the period of twelve months ending on 31st December in each year.

Accounts

13. (1) The Commission shall cause to be kept proper books of account and other records relating to its accounts.

(2) The accounts of the Commission shall be audited annually by independent auditors appointed by the Minister.

(3) The auditors' fees shall be paid by the Commission.

Annual reports

14. (1) As soon as practicable but not later than six months after the expiry of the financial year, the Commission shall submit to the Minister a report concerning its activities during the financial year.

(2) The report referred to in subsection (1) shall include information on the financial affairs of the Commission and there shall be appended to the report—

(a) an audited balance sheet;

(b) an audited statement of income and expenditure; and

(c) such other information as the Minister may require.

(3) The Minister shall, not later than seven days after the first sitting of the National Assembly next after receipt of the report referred to in subsection (1), lay it before the National Assembly.
